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**COMMISSION STAFF WORKING DOCUMENT**  
**IMPACT ASSESSMENT REPORT**

**Revision of EU marketing standards for agricultural products to ensure the uptake and supply of sustainable products**

*Accompanying the document*

**Proposal for a Directive of the European Parliament and of the Council**

**amending Council Directives 2001/110/EC relating to honey, 2001/112/EC relating to fruit juices and certain similar products intended for human consumption, 2001/113/EC relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption, and 2001/114/EC relating to certain partly or wholly dehydrated preserved milk for human consumption**

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## Glossary

Term or acronym	Meaning or definition
CAP	common agricultural policy
CMO	common market organisation
CMO Regulation	Regulation (EU) No 1308/2013
Commission	European Commission
EC	European Commission
ECJ	European Court of Justice
EU	European Union
Evaluation study 2019	external evaluation support study from 2019 <sup>1</sup>
F&V	fruit and vegetables
F2F	Farm to Fork
FIC	Food Information to Consumers Regulation <sup>2</sup>
JRC	Joint Research Centre
JRC 2022	literature review by the JRC <sup>3</sup>
MkSs	marketing standards
MSs	Member States
OPC 2019	public consultation in 2019 <sup>4</sup>

<sup>1</sup> Areté *et al.* (2020). *Evaluation of marketing standards contained in the CMO Regulation, the 'Breakfast Directives' and CMO secondary legislation.* Brussels: European Commission (<https://doi.org/10.2762/475831>).

<sup>2</sup> Regulation (EU) No 1169/2011, <http://data.europa.eu/eli/reg/2011/1169/oj>.

<sup>3</sup> Nes, K., Ciaian, P. (2021). *Marketing standards: A review of the literature. JRC Technical Report.* Luxembourg: European Union. <https://doi.org/10.2760/991707>.

ORTs	optional reserved terms
Q	quarter
REFIT	regulatory fitness and performance
SDG	Sustainable Development Goal
SWD 2020	Evaluation staff working document from 2020 <sup>5</sup>
TFEU	Treaty on the Functioning of the European Union
UNECE	United Nations Economic Commission for Europe
Workshop 2021	workshop organised by the JRC in 2021 <sup>6</sup>

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<sup>4</sup> EC (2019). Evaluation of marketing standards [Regulation (EU) No 1308/2013]. *Have Your Say*. Brussels: European Commission. <https://europa.eu/JKhyqb>.

<sup>5</sup> EC (2020). Evaluation of marketing standards. *Commission Staff Working Document SWD/2020/0230*. <https://europa.eu/RU43Ky>.

<sup>6</sup> Russo, C. et al. (2022). Workshop on Marketing Standards: Benefits and costs of EU marketing standards for agri-food products. *JRC Technical Report*. Luxembourg: European Union. <https://doi.org/10.2760/635080>.

## 1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

EU marketing standards constitute a set of rules that aim to ensure that the single market is supplied with standardised quality agricultural products that meet consumer expectations, facilitate trading and ensure a level playing field for EU producers. They concern the external qualities of products (e.g. fruit and vegetables (F&V)) and the non-visible qualities that result from particular production processes (e.g. fat content in foie gras). They generally comprise obligatory rules and optional reserved terms (ORTs)<sup>7</sup> with a view to guaranteeing the quality of agricultural products. They are product or sector-specific. Products for which standards are laid down may be marketed under the respective sales designations only if they conform to those standards. The use of these sales designations is normally of significant commercial value as consumers recognise them and decide on their purchases relying on them.

Marketing standards fulfil the need for readily available standardised information for purposes of products being traded in the supply chain. When marketing standards function well, they keep food of unsatisfactory quality off the market and provide clarity for consumers and operators in the chain. They contribute to ensuring conditions of loyal competition between all operators selling into the single market and overall they facilitate its functioning.

Therefore, marketing standards make it possible to reliably communicate product characteristics or attributes and in particular technical definitions, classification, presentation, marking and labelling, packaging, production method, conservation, storage, transport, related administrative documents, certification and time limits, restrictions of use and disposal. This facilitates trading and ensures fair conditions of competition for EU producers.

### 1.1. Political context

Stakeholders refer to marketing standards as a ‘common language’, which helps operators and consumers lower transaction costs, ensures loyal competition and a high product quality. Just as any language evolves over time, so do the needs and habits of the stakeholders in the food supply chain. Where this is the case the relevant marketing standard should be updated. The last significant revision of specific EU marketing standards dates back to 2012, when e.g. labelling requirements for olive oil were introduced and to 2009 when 25 specific standards for F&V were consolidated into 10 standards. Since then, only minor adjustments of the standards took place.

This revision is also carried out against the backdrop of the Commission’s Farm to Fork (F2F) strategy of May 2020 and the UN’s Sustainable Development Goals (Section 6.1). In the F2F strategy it is announced that the revision of EU marketing standards will aim to provide for the uptake and supply of sustainable products and to reinforce the role of sustainability criteria<sup>8</sup>. The revision of EU marketing standards is coherent and complementary to the other actions under the European Green Deal that pursue greater sustainability of food systems. Coherence was in particular ensured with the forthcoming

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<sup>7</sup> ORTs are specific expressions with positive connotations whose use in certain sectors or for certain products is regulated to make it easier for producers to communicate value-adding characteristics or attributes of their products to buyers and consumers (<https://europa.eu/!gv48CY>), e.g. eggs can only be sold as ‘free range eggs’ if the hens were kept in specific conditions (<http://data.europa.eu/eli/reg/2013/1308/oj>).

<sup>8</sup> <https://europa.eu/!rt73kQ>



revision of the Regulation on Food Information to Consumers (FIC): the revisions will align certain provisions (e.g. on origin labelling) and remove contradictions (e.g. in date marking). The revision of the marketing standards also aims to be complementary to the announced revision of animal welfare legislation and the proposal for a sustainable food systems framework, by not pre-empting on and allowing compatibility with the general sustainability provisions which are considered under these two initiatives. Annex 6 provides a mapping of the most relevant F2F actions and explains the links and overlaps with other initiatives and revisions.

The Commission intends to revise EU marketing standards both in the area of agricultural and the area of fishery and aquaculture products. Preparing the revision the Commission has published an external evaluation support study of EU agricultural marketing standards (Evaluation study 2019)<sup>9</sup> and carried out an evaluation of agricultural marketing standards that included a public consultation (OPC 2019)<sup>10</sup> and the publication of a staff working document (SWD 2020)<sup>11</sup>. This impact assessment covers agricultural products only. An impact assessment for fishery and aquaculture products is carried out separately.

The revisions discussed in this impact assessment cover those marketing standards that – pursuant to the experience of stakeholders, MSs and the Commission in their implementation as well as due to the evaluation and consultations carried out appear as in need of modernisation, simplification or increased responsiveness to sustainability considerations. In addition, the changes discussed are liable to have significant impacts and imply genuine policy choices. Having said this, there is no need for an overhaul that would introduce general changes to the policy of marketing standards. The policy as such has proved its value. Its principles are laid down in the basic act of the legislator, the Common Market Organisation Regulation (CMO Regulation). The current revision will not reopen that basic act, which has been subject to a recent reform (as part of the 2021 reform of the CAP)<sup>12</sup>. The revision operates subject to very limited exceptions concerning the ‘Breakfast Directives’ at the level of Commission acts (see the following Section).

## 1.2. Legal context

Agricultural marketing standards are one of the policy tools of the Common Agricultural Policy (CAP) that promote the specific economic and social objectives listed in Article 39 TFEU: the availability of food at prices which ensure the livelihood of agricultural producers and which consumers can afford. EU marketing standards for agricultural products are a key element of the Common Market Organisation Regulation (CMO Regulation)<sup>13</sup>. Together with the Strategic Plan Regulation and the Horizontal Regulation, the CMO Regulation constitute the three basic acts implementing the CAP.

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<sup>9</sup> Areté et al. (2020). *Evaluation of marketing standards contained in the CMO Regulation, the ‘Breakfast Directives’ and CMO secondary legislation*. Brussels: European Commission. <https://doi.org/10.2762/475831>.

<sup>10</sup> EC (2019). Evaluation of marketing standards [Regulation (EU) No 1308/2013]. *Have Your Say*. Brussels: European Commission. <https://europa.eu/!JKhyqb>.

<sup>11</sup> EC (2020). Evaluation of marketing standards. *Commission Staff Working Document* SWD/2020/0230. <https://europa.eu/!RU43Ky>.

<sup>12</sup> See Regulation (EU) 2021/2117, <http://data.europa.eu/eli/reg/2021/2117/oj>.

<sup>13</sup> <https://europa.eu/!trVY9W>.

More specifically, EU marketing standards are laid down in the following legislative documents:

- EP and Council Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products<sup>14</sup>, laying down rules concerning marketing standards, definitions, designations, sales descriptions, eligibility criteria and optional reserved terms for a broad range of sectors;
- Secondary Commission rules, laying down detailed rules on marketing standards for specific sectors;
- EP and Council ‘Breakfast Directives’, which establish specific rules on the description, definition, characteristics and labelling of coffee and chicory extracts, cocoa and chocolate products, sugars intended for human consumption, fruit jams, jellies, marmalades and sweetened chestnut purée intended for human consumption, dehydrated milk, fruit juices and honey.

The standards normally stipulate uniform product characteristics for certain agricultural products marketed in the EU. They apply to both EU products and imported products. Marketing standards are subject to official controls under Regulation (EU) 2017/625 and as defined under some specific marketing standards. Member States must carry out controls based on a risk analysis<sup>15</sup>. In practice, controls for marketing standards are usually combined with other checks to be performed on operators. Most marketing standards regulated in Commission regulations were adopted prior to the Treaty of Lisbon, in the form of Commission regulations based on Council Regulation (EC) No 1234/2007<sup>16</sup>. The latter was replaced in 2014 by the CMO Regulation, which differentiates between delegated and implementing powers for the Commission as regards ‘secondary legislation’. Commission regulations that were adopted on the basis of Regulation (EC) No 1234/2007 must therefore be aligned accordingly, that is to say separated into delegated and implementing acts (‘lisbonisation’).

Given the Commission’s Better Regulation agenda<sup>17</sup>, all marketing standards considered in the revision should respect the requirement for legislative simplification in line with the Commission’s regulatory fitness and performance (REFIT) programme<sup>18</sup>.

## 2. PROBLEM DEFINITION

### 2.1. What is/are the problems?

The Commission’s recent evaluation of marketing standards demonstrates that the EU’s marketing standards regime is generally deemed effective in achieving its objectives (SWD 2020) and that the costs are proportionate to the benefits. As such, agricultural marketing standards are one of the policy tools of the CAP that promote the specific economic and social objectives that are listed in Article 39 TFEU, namely the availability of food at prices that ensure the livelihood of producers and that consumers can afford.

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<sup>14</sup> <http://data.europa.eu/eli/reg/2013/1308/oj>.

<sup>15</sup> Article 90a of Regulation (EU) No 1308/2013, as amended by Regulation (EU) 2021/2117. possible fraudulent or deceptive practices.

<sup>16</sup> <http://data.europa.eu/eli/reg/2007/1234/oj>.

<sup>17</sup> <https://europa.eu/!cB33ft>.

<sup>18</sup> <https://europa.eu/!xr49HM>.

However, the strength of marketing rules to create stability and predictability by specifying requirements and laying down standards for the marketing of products can diminish when the market evolves and new needs arise due to e.g. technological change, new marketing strategies or evolving consumer preferences (SWD 2020). Outdated standards may impede innovation or fail consumer expectations. In such circumstances, marketing standards require adaptation. The current marketing standards are more than ten years old (depending on the sector). Over the last decade, agricultural markets have evolved significantly, driven by innovation but also changing societal concerns and consumer demand. The marketing standards that do not reflect these changes are of reduced relevance.

The necessity to transition to a fair, healthy and environmentally friendly sustainable food system has increasingly become apparent. While sustainability concerns are often addressed in dedicated legislation, such as animal welfare, nutrition or public health, the potential of marketing standards to contribute to sustainability objectives is inherent. Requirements under marketing standards can translate into specific product characteristics, including specific production practices, or attributes that can contribute to the wider context in which they operate. Marketing standards can therefore support the transition of actors along the food chain and nudge consumers to make more sustainable choices. The F2F therefore foresees a revision of EU marketing standards to provide for the uptake and supply of sustainable products and to reinforce the role of sustainability criteria (action 18 of the F2F's Annex). This concerns stakeholders' behaviours throughout the food system. The current marketing standards insufficiently integrate sustainability concerns and their potential role to support the transition to sustainable food systems is thereby hampered.

For instance, there is scope for marketing standards to better support diets that are more environmentally-friendly, healthier and that better promote animal welfare and thereby even if done in a targeted and incremental way contribute to the overarching sustainability objectives as laid down in the Green Deal and F2F communications.

In preparation of this impact assessment, the Commission services organised a workshop on 'Megatrends Analysis for the Impact Assessment: How to ensure quality and sustainability in the food supply chain in future what role for marketing standards'? It took place on 27 October 2021 with participants from DG AGRI, DG SANTE and the JRC who mapped relevant megatrends<sup>19</sup>; the most relevant megatrends were climate change and environmental degradation, growing consumerism, shifting health challenges, aggravating resource scarcity, and accelerating technological change (Annex 8).

The specific problems pertaining to the major individual revisions under the agricultural marketing standards are detailed in Section 10.

The need to adapt the existing Commission regulations that govern marketing standards to the Lisbon Treaty (separation into implementing and delegated Commission regulations) has been discussed above (political and legal context). It is a technical adaptation obligation that does not leave room for political choices. In and of itself it does not have economic or social consequences and is, therefore, not specifically discussed in the impact assessment.

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<sup>19</sup> <https://europa.eu/!cP98vD>

## 2.2. What are the problem drivers?

This Section gives a general idea of the drivers that suggest a need for adaptation of marketing standards. Having said this, the drivers relating to the concrete ideas for revisions of individual standards tend to be product-specific and are therefore covered at their respective level of specificity in Section 10.

In the eyes of consumers, attributes of food do not only encompass intrinsic characteristics of food but may also pertain to methods of production. The latter characteristics cannot be readily ascertained by simple visual inspection at the time of purchase. Consumers are therefore unable to assess claims made by producers regarding such intangible attributes, which increases the asymmetry of information between producers and consumers (Figure 1). The ensuing trust problems can lead to market failures because producers might falsely advertise desirable attributes or neglect to inform consumers about undesirable ones. Lack of trust regarding these so-called ‘credence’ attributes leads to an adverse selection problem where consumers distrust claims and are unwilling to pay the premium that would be necessary to compensate producers for their extra costs. Rules on misleading labelling practices can and do address this problem. The use of standards can further facilitate vertical coordination between producers and consumers and can also reduce the information asymmetry by guaranteeing certain characteristics of a product and its production methods<sup>20</sup>. The Commission’s evaluation of marketing standards found that they are successful in providing consumers with transparent information (SWD 2020).

Specifying not only product characteristics but also production and distribution methods means that operators who innovate on existing products, production and distribution methods may run afoul of existing marketing standards. Therefore, once set, marketing standards ought to be subject to periodic revisions, where needed, so as to accommodate new technologies, marketing strategies and consumer preferences (SWD 2020).

Marketing standards exist at different levels and in different forms there can be diverging national standards in MSs, international standards that are voluntary or implemented differently, or (where there are no public standards) a panoply of private standards, often developed by retailers and used in relation to producers. This might create a situation of information overload for consumers. Moreover, such discordance can lead to increased transaction costs, reduced transparency in business-to-business transactions, and situations of unfair competition among operators in different MSs, thereby hampering the single market.

Stakeholders generally appreciate the mandatory nature of EU marketing standards that are tailored to the specific needs of the single market, help achieve a more homogeneous level of consumer protection, set sufficiently strict minimum requirements that reduce ‘gold plating’ of quality requirements by retailers, and create a more level playing field for operators across MSs. This means by setting minimum harmonised requirements whether for the quality of products or the use of ORTs EU marketing standards add value with respect to national, international or private marketing standards, which cannot ensure the same level of coherence and consistency. By reducing the necessity for operators to segment the market via their own standards, EU marketing standards also

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<sup>20</sup> Rousset et al. (2015). Voluntary environmental and organic standards in agriculture. <https://doi.org/10.1787/5jrw8fg0rr8x-en>; Mancini (2019). Public and private food standards. [https://doi.org/10.1007/978-3-030-28642-2\\_4](https://doi.org/10.1007/978-3-030-28642-2_4).

contribute to a fairer allocation of value added among the different stages of the supply chain. More generally, marketing standards can induce pro-competitive effects by stimulating trade and more competition across markets (SWD 2020, JRC 2022, Workshop 2021).

Last but not least, discordance between marketing standards and other rules can develop over time and can be addressed by adjustments to the marketing standards (e.g. concerning the date marking of eggs for food safety, or exemptions in case of veterinary orders for organic standards).

Figure 1 - Overview of problem drivers and consequences

Context	Drivers	Problems	Consequences
EU MkSs are generally effective and proportionate	Asymmetry of information	Possible lack of trust in the absence of MkSs	Market failure
Current MkSs do not address new issues	Regulatory discordance	Possible lack of transparency in the absence of MkSs	Increased transaction costs
Current MkSs rarely cover sustainability concerns	Need to boost sustainability	Possible lack of a level playing field in the absence of MkSs	Unfair competition
Some MkSs are not in line with the Treaty of Lisbon	Legislative requirements	No adaptation to changes and innovation without revisions	Loss of competitiveness
MkSs and other requirements are not always coherent		Outdated legislation	

### 2.3. How likely is the problem to persist?

Outdated marketing standards may prevent operators in the food supply chain from harnessing technological progress, making use of innovations in production or marketing, and addressing changing consumer demand. With time, more operators in more sectors would feel these limits. As national standards must not deviate from EU marketing standards and private standards cannot deliver the same benefits as public standards, the only way to accommodate such needs in the food supply chain is to review the EU marketing standards.

The same is true, *mutatis mutandis*, concerning the demand for greater sustainability in the way our food systems are configured. While there seems to currently be no universally agreed definition of what is a ‘sustainable food system’, approximations can serve as a working concept. A sustainable food system is 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. This means that it is profitable throughout (economic sustainability), it has broad-based benefits for society (social sustainability); and it has a positive or neutral impact on the natural environment (environmental sustainability).<sup>21</sup>

Changing consumer demand could for instance mean that certain elements of existing marketing standards might have come to constitute obstacles in the pursuit of sustainability outcomes. Albeit the overall level of ambition for sustainability of the EU’s

<sup>21</sup> Nguyen (2018). Sustainable food systems: Concept and framework. Food and Agriculture Organization, Rome. <https://www.fao.org/publications/card/en/c/CA2079EN/>.

food systems will also (and importantly) be determined by regulatory action in policy areas other than marketing standards, the non-adaptation of the standards would impede their potential contribution to more sustainability and thereby could slow down the move to greater sustainability in the food supply chain. Alternatively, the introduction of a new standard may generate the enabling conditions for greater satisfaction of consumer demand *and* serve producers' interest in seeing their sustainability related efforts being remunerated. In other instances, trade-offs between the three pillars of sustainability, i.e. economic, environmental and social, may have to be arbitrated.

Private standards often emerge when public marketing standards are lacking. This can be advantageous as private standards can be more nimble and targeted. On the other hand, a plethora of private standards across MSs can confound consumers and diminish the advantages of the single market. This is true not least for private sustainability standards. In the public consultation, only 25% of respondents believed that a speedy and comprehensive uptake and supply of sustainable agricultural products will happen without a revision of EU marketing standards to address such aspects (Annex 2).

For producers, an 'inflation' of sustainability standards can also mean that investments made to achieve the requirements of one standard may not be useful for the requirements of another standard, causing compliance costs to rise, and making switching buyers more costly<sup>22</sup>. Moreover, when standards are linked to the use of different terms or labels, consumers may become confused by too much information. They may struggle to compare products across schemes<sup>23</sup>. Finally, to gain legitimacy, sustainability standards must have proficient enforcement mechanisms; public enforcement is often more credible than private enforcement. Therefore, while measures taken at other levels may contribute to bringing more sustainable products on the market, they would be less effective than actions taken at EU level.

### 3. WHY SHOULD THE EU ACT?

#### 3.1. Legal basis

Article 43(2) of the Treaty on the Functioning of the European Union (TFEU) provides that the EP and the Council shall establish the provisions necessary for the pursuit of the objectives of the CAP. The CMO is one of the three basic acts that together are the founding instruments of the CAP. It contains basic provisions on marketing standards. The CMO Regulation has been subject to the recent CAP reform (2021) including its section on marketing standards. The Commission will, as part of the current revision, not propose to 're-open' the CMO.

The CMO Regulation confers on the Commission the power to adopt delegated and implementing acts, that is to say Commission-level regulations, *inter alia* to further lay down marketing standards for agricultural products (Articles 75-77, 86-88, 91, 227).

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<sup>22</sup> Prag (2016). Environmental labelling and information schemes. <https://www.oecd.org/env/labelling-and-information-schemes.htm>.

<sup>23</sup> Drugova et al. (2020). Are multiple labels on food products beneficial or simply ignored? <https://doi.org/10.1111/cjag.12259>; Giner & Brooks (2019). Policies for encouraging healthier food choices. <https://doi.org/10.1787/11a42b51-en>; Strom (2017). What to make of those animal-welfare labels on meat and eggs. <https://nyti.ms/2jSaSi2>; Brécard (2014). Consumer confusion over the profusion of eco-labels. <https://doi.org/https://doi.org/10.1016/j.reseneeco.2013.10.002>.

In the 2021 reform, basic rules on marketing standards remained untouched. As a result, the scope, content, main empowerments and additional requirements for most of the sectors (e.g. F&V) were kept unaltered. The main modifications may be summarised as follows:

- Production methods and sustainability in the supply chain were added to the elements that the Commission should take into account while adopting delegated acts on the reservation, amendment and cancellation of ORTs.
- A new provision is inserted on checks and penalties, whereby MSs shall carry out checks, based on a risk analysis, in order to verify whether the products referred to in Article 1(2) conform to the EU marketing standards and shall apply adequate, proportionate and dissuasive administrative penalties.
- Sector specific modifications were introduced for wine grape varieties and sectoral aspects on the import of wine, which are not covered by the present report.

Marketing standards are also contained in the so called ‘Breakfast’ Directives. The Directives are basic acts adopted by the EP and the Council. The Directives contain certain powers for the Commission to adopt delegated acts (for changing the Directives’ annexes). The legal bases for the revision of the EU marketing standards for agricultural products are listed in more detail in Annex 5.

### **3.2. Subsidiarity: Necessity of EU action**

EU legislation on marketing standards for agricultural products had for many products replaced heterogeneous pre-existing national standards and thus contributed to a level playing field for producers across the EU. Harmonised standards are trade-creating and promote food security as they allow diversification of supplies and increased resilience and redundancy. In the absence of EU standards, MSs could apply different rules or no rules at all, which would detract from the good functioning of the single market. The ECJ has early on adopted judgments that addressed challenges for the single market that arose from diverging national product-related rules. The reliance on case-law is however second best to predictable uniform rules, also because exceptions are legally possible, in particular for consumer protection which has been recognised as a ‘mandatory requirement’ on the basis of which MSs can introduce national rules.<sup>24</sup> While private standards could fill the void to some extent, they would likely differ across operators and at the national level, and therefore imply higher transaction costs for trade.

Short of EU measures, MSs lack coordinative mechanisms to bring about a harmonisation of marketing standards, nor do they have obvious incentives to self-align. From this follows the added value of EU legislation that ensures a consistent and up-to-date set of marketing standards for the relevant agricultural products across the EU. This assessment is also supported by the results of the public consultation: respondents saw a key role for the EU in regulating marketing standards (Annex 2). A well-regulated sector is less susceptible to cause hindrances for consumers and business stakeholders that would invite national measures. National competent authorities generally deem that the objectives of EU marketing standards respond to the originally identified needs, problems and issues (Evaluation study 2019).

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<sup>24</sup> See for instance, ECJ judgment of 10 January 2006, C-147/04, *De Groot en Slot Allium*, paras 74 ss.

Current marketing standards for agricultural products are set in existing EU legislation. Therefore, by their nature, their revision can only be addressed through EU action.

### 3.3. Subsidiarity: Added value of EU action

Marketing standards have been a feature of EU agricultural and food policy since the early days of the CAP (Evaluation study 2019), with EU standards for many sectors or products going back to the 1970s or even to the early 1960s<sup>25</sup>. Already then, the purpose of marketing standards was to keep products of insufficient quality off the market, to bring production in line with the expectation of consumers, and to facilitate trade within the common market based on fair trade and common rules<sup>26</sup>. International marketing standards date back even further, to the early 1950s<sup>27</sup>. This long history of marketing standards at the international level is indicative of their value for trade and it also indicates that in many cases individual countries cannot sufficiently address the issue through national standards.

The recent external evaluation support study on EU marketing standards for agricultural products concluded that current standards have generally been effective in achieving their intended objectives but failed to address new needs, problems and issues that emerged after the setting of the current standards (Evaluation study 2019); it also did not address sustainability issues to any larger extent (Section 4.2.3). To ensure that EU marketing standards continue to provide the benefits that operators in the food supply chain and national competent authorities have confirmed they can provide, the current standards need to be updated, i.e. action at EU level is required to ensure a consistent set of marketing standards for relevant agricultural products across the EU that addresses also new needs, problems and issues. The external evaluation support study also identified a number of potential advantages of establishing EU marketing standards for sectors or products that are currently not covered. These include better consumer protection through more homogeneous product information, fairer and more equal treatment of producers across MSs, easier intra-EU trade, better valorisation of the underlying agricultural products, and greater coherence of the regulatory framework for production and marketing across the EU. Moreover, EU marketing standards provide a level playing field also for trade with third countries.

The evaluation also found that EU marketing standards provide significant added value compared to international and private marketing standards because they (i) are mandatory and the requirements must be complied with across the EU, (ii) are tailored to the specific operational and market situation of the EU, and (iii) for many products impose more demanding quality requirements (SWD 2020). Moreover, and crucially, addressing

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<sup>25</sup> Regulation No 136/66/EEC on the establishment of a common organisation of the market in oils and fats, <http://data.europa.eu/eli/reg/1966/136/oj>; or Regulation No 158/66/EEC on the application of quality standards for F&V marketed within the Community, <http://data.europa.eu/eli/reg/1966/158/oj>.

<sup>26</sup> Règlement n° 158/66/CEE concernant l'application des normes de qualité aux fruits et légumes commercialisés (<http://data.europa.eu/eli/reg/1966/158/oj>).

<sup>27</sup> 'In 1951 an international convention on the naming and composition requirements of particular varieties of cheese was signed in the Italian city of Stresa. The Committee on Inland Transport of the United Nations Economic Commission for Europe (ECE) initiated work to provide quality standards for fresh F&V moving in trade in Europe, with the objective of preventing disputes over the handling of these products during transport. These standards were to form the basis for the current work of the Codex Alimentarius Commission on quality requirements for fresh tropical F&V moving in trade anywhere in the world' (<http://www.fao.org/3/v7700t/v7700t09.htm>).



problems stemming from existing EU legislation can by their nature only be achieved at EU level.

And indeed, in the public consultation for the recent evaluation of EU marketing standards, respondents confirmed that EU marketing standards contribute to supplying the market with products of a standardised and satisfactory quality, improving the conditions for production and marketing and creating a level-playing field, providing adequate and transparent information to consumers, and providing the purchaser with value for money (OPC 2019). Similarly, in the public consultation for the current revision of EU marketing standards, respondents stated that achieving the objectives of the revision can best be done at the EU level, and almost two thirds of the respondents think that this is best done via solutions that resort to compulsory legislation (Annex 2), thus supporting a legislative approach at the EU level.

#### **4. OBJECTIVES: WHAT IS TO BE ACHIEVED?**

##### **4.1. General objectives**

The CMO Regulation itself contains in its recitals several indications of the policy objectives of marketing standards. The latter are: ‘to take into account the expectations of consumers and to contribute to the improvement of the economic conditions for the production and marketing of agricultural products and their quality’ (recital 65). They may be revised ‘to take account of the expectations of consumers and to improve the economic conditions for the production and marketing as well as the quality of certain agricultural products, and in order to adapt to constantly changing market conditions, evolving consumer demands, and developments in relevant international standards, and in order to avoid creating obstacles to product innovation’ (recital 70). They should furthermore ‘enable the market to be easily supplied with products of a standardised and satisfactory quality, and in particular should relate to technical definitions, classification, presentation, marking and labelling, packaging, production method, conservation, storage, transport, related administrative documents, certification and time limits, restrictions of use and disposal’ (recital 71).

The general objective of this revision is to modernise and update EU marketing standards for agricultural products to ensure the provision of quality products and a level playing field across the single market (Table 1). This particularly contributes to the Treaty goal of ensuring the rational development of agricultural production. The modernisation is also driven by the need identified in the F2F to stimulate sustainable practices along the supply chain and promote sustainable food consumption, by the need to address new needs of operators and consumers, by the requirements of the REFIT programme to simplify and reduce the administrative burden, and by the obligation to bring the current EU marketing standards in line with the legal requirements of the Treaty of Lisbon.

Table 1 - Overview of problems and objectives

Problems of MkSs	Specific objectives	General objective
<ul style="list-style-type: none"> <li>▪ Absence of MkSs for some products prevents level playing field</li> <li>▪ Outdated MkSs compromise trust, transparency and innovation</li> <li>▪ MkSs often do not consider sustainability (as a dimension of product quality)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Align and simplify MkSs</li> <li>▪ Address new needs of stakeholders in the MkSs</li> <li>▪ Integrate more sustainability aspects in MkSs</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ensuring the provision of quality products and fair conditions of competition across the single market</li> </ul>

Note: For a chart with the full intervention logic, see Annex 7.

## 4.2. Specific objectives

While specific objectives are outlined below and included in Table 1 above, further specifications on ways to achieve and measure them and what would characterise successful outcomes can be found in sections on options and their impacts, as well as in the monitoring sections. Table 2 provides an overview of the specific objectives pursued under each of the individual initiatives presented in Section 10 and Annex 9.

Table 2 - Overview of specific objectives pursued by individual initiatives

		Streamlining / simplification	Addressing new needs	Reinforce sustainability
<b>Horticultural products</b>				
Definition of cider and perry (Section 10.1)	Introduce a new EU standard with detailed rules for the marketing of cider and perry, including a definition of cider and of perry, and complemented by ORTs.		V	V
Reduced-sugar fruit juice (Section 10.2)	Make it possible for fruit juice to be labelled as having ‘reduced sugar’ content to target practices that can remove natural fruit sugar in the juice.		V	V
Added sugar in jams & jellies (Section 10.3)	Increase the required fruit content in jams and jellies.		V	V
Existing F&V legislations (Annex 9 A.1)	Merge the current rules of F&V, bananas and dried grapes where technically and legally possible.	V		V
Origin labelling of exempted F&V (Annex 9 A.2)	Revise the current exemption for nuts, dried fruit and some minor products in the standard.		V	V
‘Ready to eat’ F&V (Annex 9 A.3)	Clarify the definition of products that have undergone trimming or cutting and obligation of origin labelling.		V	V
‘Ugly’ F&V (Annex 9 A.4)	Bolster derogations to the marketing standard for F&V insofar as products with cosmetic defects are concerned.		V	V
‘Force majeure’ exemption for F&V (Annex 9 A.5)	Include a temporary exemption to the application of marketing standard for F&V in cases of ‘force majeure’.		V	V
Sugar content in fruit nectar (Annex 9	Adapt the nutritional claims regarding sugar content on the front-of-pack label for fruit juice and nectars so	V	V	V

		Streamlining/ simplification	Addressing new needs	Reinforce sustainability
A.6)	as to reduce the risk of consumer confusion.			
Use of the term 'marmalade' (Annex 9 A.7)	Authorise the use of the term 'marmalade' to designate jam.		V	V
<b>Animal products</b>				
Origin of honey blends (Section 10.4)	Require the labelling of the country of origin for the blends of honeys.		V	V
Liver weight for foie gras (Section 10.5)	Maintain the existing marketing standard unchanged, i.e. force-feeding to ensure the minimum liver weight will remain necessary, but consumers will not be potentially misled.			
Use of free-range areas (Annex 9 B.1)	Amend the marketing standard to authorise solar panels to be used for 'free range' areas where this does not interfere with the content of the message to of the optional reserved term used.		V	V
Egg standards & organic rules (Annex 9 B.2)	Align egg marketing standards with rules for organic eggs.	V		V
Minimum durability of eggs (Annex 9 B.3)	Abolish specific provisions on the minimum durability for eggs, hence leaving the matter to EU horizontal rules on date marking under FIC (to be revised under F2F).	V		V
Marking of eggs (Annex 9 B.4)	Compulsory marking of eggs on farm as general rule; in justified cases, the legislation could allow for a derogation to the subsequent stage of the chain.			V
ORTs for poultrymeat (Annex 9 B.5)	Maintain current system but allow flexibility and make limited adjustments in the definition of the types of production system; the use of other terms indicating other types of production systems at national level should be allowed.		V	V
Water content in poultrymeat (Annex 9 B.6)	Maintain the current limits for water content in poultrymeat and not accommodate the increasing intrinsic water contained in birds of fast-growing poultry breeds by loosening the total water limit.			V
Downgrading of poultrymeat (Annex 9 B.7)	Clarify provisions on inspections to allow sorting out meat with visual defects without downgrading the whole batch.		V	V
Definitions of poultry products (Annex 9 B.8)	Introduce the necessary definitions following closely the corresponding definitions for chicken meat of the United Nations Economic Commission for Europe (UNECE).		V	V
ORTs for other animals (Annex 9 B.9)	Do not introduce ORTs for animals other than poultry as there is, at this stage, no need or EU added value for a specific marketing standard to regulate such ORTs.			V
<b>Arable crops and olive oil</b>				
Sales in bulk of olive oil (Annex 9 C.1)	Allow MSs to adopt national rules for the bulk sale of olive oil under strict conditions that guarantee safety and quality.		V	V
Plant-based preparations (Annex 9 C.2)	Keep the status quo as the co-legislator had already extensive discussions on that topic during the process of amending the CMO Regulation and decided to			

		Streamlining/ simplification	Addressing new needs	Reinforce sustainability
	keep the status quo.			
Origin of pulses (Annex 9 C.3)	Require the labelling of the country of origin of pulses.		V	V

#### 4.2.1. Streamline and simplify EU marketing standards

The revision must align the current standards with the requirements of the Lisbon Treaty; this is less of an objective than an obligation. The revision will also look into the potential to simplify the existing legislation by consolidating rules into less numerous Commission acts. There are certain constraints concerning simplification according to the national competent authorities that were surveyed in the recent external evaluation support study on EU marketing standards for agricultural products (Evaluation study 2019, pp. 11, 201).

*Link with the general objective:* Bringing current EU marketing standards for agricultural products in line with the requirements of the Lisbon Treaty is part of current legal obligations.

#### 4.2.2. Address new needs of stakeholders

The recent evaluation of EU marketing standards for agricultural products found that some existing standards may not or no longer sufficiently accommodate changes in technology, marketing strategies and consumer preferences (SWD 2020). This need has also been confirmed in the public consultation where respondents supported the revision of the standards for the various products to take into account evolving consumer preferences, technological change and new production methods (Annex 2). Therefore, the revision of EU marketing standards for agricultural products should take the need for such changes into account and thus avoid having a negative effect on innovation. By the same token, the effect of changes on sustainability in all its dimensions should be duly taken into account (see next objective).

*Link with the general objective:* Revising the standards to take into account new developments (that can affect competition) means they can be modernised to reflect current needs and (quality) expectations of stakeholders to ensure the continued provision of quality products and condition of fair competition among operators.

#### 4.2.3. Add more sustainability criteria

In the recent evaluation of EU marketing standards for agricultural products, the only link between the standards and sustainability that was addressed was in the context of food waste; the external evaluation support study did not find conclusive evidence that marketing standards would contribute to increased food waste (Evaluation study 2019). However, since then the Commission published its F2F that proposes to review the EU marketing standards for agricultural products with a view to ensuring the uptake and supply of sustainable products and reinforcing sustainability criteria. Therefore, one of the specific objectives of the current initiative is to capture the effects of this new sustainable food ambition, to try to fill the analytical gap left open by the recent evaluation, to identify which marketing standards can be accordingly adapted now, and to address where pertinent relevant sustainability issues through EU marketing standards.

*Link with the general objective:* Including sustainability criteria in marketing standards, in particular concerning production and distribution methods, can lead to enhancing the offer of quality products (as defined for consumer also by reference to their production and distribution methods) and promote, in this respect, a level playing field, while contributing to the overall transition towards more sustainable food systems as envisaged by the F2F.

#### *4.2.4. Why certain marketing standards are planned to be revised while others not*

Against the backdrop of the wide range of EU marketing standards laid down for each product and/or sector, this Impact Assessment envisages the revision (in substance) of certain marketing standards only.

Generally speaking, the drivers that led the Commission to envisage a change in the *status quo* of certain marketing standards are linked to one or more of the following considerations: the need to adjust certain marketing standards to technological development and innovation; the margin to simplify complex rules and/or reunite several separate acts; the possibility to enhance sustainability; a widespread concern or push from operators or civil society, as expressed in the OPC; the inputs received by Member States during their consultation; the experience gathered in the Evaluation 2019 and in the Workshop 2021; the aim to enhance consistency with other EU policies.

More specifically, the reasons for modifying certain marketing standards are described under the relevant points of Section 10 and Annex 9.

As regards the absence of an approach to revise all marketing standards in general, the following considerations apply.

In the Evaluation 2019, it was concluded that there were no significant limitations in terms of effectiveness, no significant potential for simplification, no significant issues in terms of relevance or coherence for the existing marketing standard for chocolate (Directive 2000/36/EC of the European Parliament and of the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption) and coffee (Directive 1999/4/EC of the European Parliament and of the Council of 22 February 1999 relating to coffee extracts and chicory extracts). Also, the open public consultation did not bring suggestions for improvement from stakeholders, including in particular as regards sustainability or simplification, nor did Member States raised difficulties with the current specifications. Therefore, the Commission does not intend to revise these standards.

As regards hops, there are no marketing standards for hops as such, only minimum marketing requirements and quality characteristics of hops and hop products. These requirements are currently being examined with Member States experts as part of a modernisation exercise of the legislation concerning hops, including also imports and controls. Therefore, hops was not included in this Impact Assessment.

Marketing standards for other products<sup>28</sup>, such as for bovine meat, bananas, milk and milk products or wine function well. Moreover, the open public consultation did not bring suggestions for improvement from stakeholders nor did Member States raised

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<sup>28</sup> See Annex 5 for a full list of legal bases and legislation for marketing standards.

difficulties with the current system. Consequently, the Commission does not intend to amend the relevant legislations.

### **4.3. Consistency with other EU policies**

The public consultation for the recent evaluation of EU marketing standards for agricultural products found that respondents agreed that the current EU standards are consistent with other EU policies, such as EU rules of food safety, on food information to consumers, on geographical indications, and on organic products (OPC 2019). This is in line with the marketing standard policy's complementary objectives against the backdrop of the listed policies. Modernising and simplifying the standards is not expected to affect this basic relationship of consistency.

By reinforcing sustainability criteria, the revision can contribute to the other actions under F2F and Europe's Beating Cancer Plan<sup>29</sup>, which aim to promote more sustainability and healthy diets. Having said this, integrating environmental and social sustainability elements in marketing standards can imply, in certain instances, overlaps with dedicated legislation or trade-offs between the three pillars of sustainability (economic, environmental and social). These instances are specifically discussed in relation to the sectoral changes that are considered, as well as in relation to the economic, social and environmental impacts.

To ensure consistency with other EU policies can be challenging where choices under other policies will be made subsequent to the revision of the marketing standards (see the proposal for a legislative framework for sustainable food systems under Action 1 of the F2F). Having said this, changes considered in this impact assessment focus on revisions that appear, at this juncture, relevant and proportionate to achieve incremental progress on sustainability and contribute at the same time to the overall sustainability transition envisaged by the forthcoming legislative framework for sustainable food systems. What is more, they have, more often than not, a technical dimension that subsequent horizontal approaches are unlikely to have. Nevertheless, the sequencing of the F2F actions suggests that further adaptations to marketing standards cannot be excluded if they prove necessary to align to forthcoming sustainability principles, objectives, definitions and responsibilities contained in horizontal legislative framework for sustainable food systems.

The Commission is committed to high standards of fundamental rights. The revision respects the rights enshrined in the Charter of Fundamental Rights of the European Union (Articles 51, 52)<sup>30</sup>; an effective system of EU marketing standards will in particular contribute to stakeholders' ability to conduct a business on a level playing field across the single market (Article 16).

## **5. WHAT ARE THE AVAILABLE POLICY OPTIONS?**

Given the heterogeneous nature of the different individual revisions, which cover different marketing standards for different products in different sectors, there are no general options for the overall initiative that would cover the possibilities of each individual revision in a comprehensive way and map a sufficiently concrete and realistic decision space for policy makers. The options of each of the individual revision to

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<sup>29</sup> [https://ec.europa.eu/health/system/files/2021-02/eu\\_cancer-plan\\_en\\_0.pdf](https://ec.europa.eu/health/system/files/2021-02/eu_cancer-plan_en_0.pdf).

<sup>30</sup> [http://data.europa.eu/eli/treaty/char\\_2012/oj](http://data.europa.eu/eli/treaty/char_2012/oj).

achieve the objectives are therefore described in the assessments of each of the significant revisions (Section 10). Planned revisions of marketing standards that do not necessitate a full-fledged impact assessment as per the Commission's Better Regulation Framework are presented in Annex 9.

## **6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?**

The revision of EU marketing standards for agricultural products actually covers a series of individual revisions of separate standards for different products in different sectors. While generally unrelated and independent from each other, they are rooted in the same principles of the marketing standards policy. The impacts that can be addressed at a more general level are discussed here.

What is common to all of the revisions is that the underlying quantitative evidence may be characterised as limited as 'the academic literature on marketing standards is scarce' (JRC 2022, p. 6). Unfortunately, neither the external evaluation support study (Evaluation study 2019), nor the evaluation (SWD 2020), nor the public consultation (Annex 2), nor the targeted consultation of MSs (Annex 2), nor the JRC workshop (Workshop 2021), nor ad hoc consultations with stakeholders allowed to fully map the situation in terms of concrete quantitative information on costs and benefits. (Annex 4 describes the methods used to address this dearth of hard data and explains the key role of targeted consultations and the use of expertise within the Commission used to close that gap.) This being said, stakeholders, including consumers, generally expect that the benefits of a revision of marketing standards outweigh the costs, and also qualitative information can be relied on while factoring in its limitations.

### **6.1. Likely impact in terms of contributions to the SDGs**

As the JRC workshop has shown (Workshop 2021), and as the likely economic, social and environmental impacts discussed below show, revising marketing standards can help achieve several Sustainable Development Goals (SDG<sup>31</sup>). In particular, such a revision *can*:

- contribute to food security, nutrition and sustainable agriculture (SDG2);
- Ensure healthy lives and promote well-being for all at all ages (SDG3);
- build confidence and create market opportunities (SDG8);
- define a common 'language' for all participants in a supply chain (SDG8);
- facilitate business transactions through given quality requirements (SDG8);
- develop markets and facilitate market access (SDG8), e.g. by granting farmers in least developed countries access to the EU market;
- increase profitability of producers (SDG8);
- help reduce food loss and waste and use natural resources efficiently (SDG12);
- lower greenhouse gas emissions without threatening food production (SDG13);
- contribute to biodiversity protection (SDG15).

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<sup>31</sup> <https://undocs.org/A/RES/71/313>.

## 6.2. Likely impacts on fundamental rights

All policy options respect the fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Further impacts on fundamental rights are not anticipated under any of the options.

## 6.3. Likely impacts on digitalisation

DG AGRI discussed the initiative with DG DIGIT and verified that there is no major digital impact of the initiative and no need for new systems, IT standards, databases, or communications tools<sup>32</sup>. This confirmed the findings of the technical workshop that did not identify any significant impact of digitalisation on marketing standards as such (Workshop 2021).

## 7. HOW DO THE OPTIONS COMPARE?

Given the heterogeneous nature of the different individual revisions, which cover different marketing standards for different products in different sectors, there are no general options for the overall initiative that would cover the possibilities of each individual revision in a comprehensive way and map a sufficiently concrete and realistic decision space for policy-makers. The comparison of the different options for each of the individual significant planned revisions are therefore described in detail in the assessments of each of these revisions (Section 10).

Nevertheless, the **effectiveness** of the different initiatives in achieving the specific objectives referred to in point 4.2 is presented in the following Table 3:

*Table 3 - Mapping of the achievement of the specific objectives*

		Streamlining / simplification	Addressing new needs	Reinforce sustainability
<b>Horticultural products</b>				
Definition of cider and perry (Section 10.1)	Introduce a new EU standard with detailed rules for the marketing of cider and perry, including a definition of cider and of perry, and complemented by ORTs.	–	++	++
Reduced-sugar fruit juice (Section 10.2)	Make it possible for fruit juice to be labelled as having ‘reduced sugar’ content to target practices that can remove natural fruit sugar in the juice.	–	++	++
Added sugar in jams & jellies (Section 10.3)	Increase the required fruit content in jams and jellies.	0	+	+
Existing F&V legislations (Annex 9 A.1)	Merge the current rules of F&V, bananas and dried grapes where technically and legally possible.	++	0	+
Origin labelling of exempted F&V (Annex 9 A.2)	Revise the current exemption for nuts, dried fruit and some minor products in the standard.	–	++	+

<sup>32</sup> 24 November 2021: Online meeting between DG AGRI.G1, DG DIGIT.01 and DG DIGIT.D2 to discuss the possible digitisation dimension of the revision of EU marketing standards for agricultural products.



		Streamlining/ simplification	Addressing new needs	Reinforce sustainability
'Ready to eat' F&V (Annex 9 A.3)	Clarify the definition of products that have undergone trimming or cutting and obligation of origin labelling.		+	+
'Ugly' F&V (Annex 9 A.4)	Bolster derogations to the marketing standard for F&V insofar as products with cosmetic defects are concerned.	–	+	++
'Force majeure' exemption for F&V (Annex 9 A.5)	Include a temporary exemption to the application of marketing standard for F&V in cases of 'force majeure'.	–	+	++
Sugar content in fruit nectar (Annex 9 A.6)	Adapt the nutritional claims regarding sugar content on the front-of-pack label for fruit juice and nectars so as to reduce the risk of consumer confusion.	+	+	+
Use of the term 'marmalade' (Annex 9 A.7)	Authorise the use of the term 'marmalade' to designate jam.	–	+	+
<b>Animal products</b>				
Origin of honey blends (Section 10.4)	Require the labelling of the country of origin for the blends of honeys.	–	++	++
Liver weight for foie gras (Section 10.5)	Maintain the existing marketing standard unchanged, i.e. force-feeding to ensure the minimum liver weight will remain necessary, but consumers will not be potentially misled.	n/a	n/a	n/a
Use of free-range areas (Annex 9 B.1)	Amend the marketing standard to authorise solar panels to be used for 'free range' areas where this does not interfere with the content of the message to of the optional reserved term used.	0	++	++
Egg standards & organic rules (Annex 9 B.2)	Align egg marketing standards with rules for organic eggs.	+	0	+
Minimum durability of eggs (Annex 9 B.3)	Abolish specific provisions on the minimum durability for eggs, hence leaving the matter to EU horizontal rules on date marking under FIC (to be revised under F2F).	++	0	++
Marking of eggs (Annex 9 B.4)	Compulsory marking of eggs on farm as general rule; in justified cases, the legislation could allow for a derogation to the subsequent stage of the chain.	–	0	+
ORTs for poultrymeat (Annex 9 B.5)	Maintain current system but allow flexibility and make limited adjustments in the definition of the types of production system; the use of other terms indicating other types of production systems at national level should be allowed.	–	+	+
Water content in poultrymeat (Annex 9 B.6)	Maintain the current limits for water content in poultrymeat and not accommodate the increasing intrinsic water contained in birds of fast-growing poultry breeds by loosening the total water limit.	0	–	++
Downgrading of poultrymeat (Annex 9 B.7)	Clarify provisions on inspections to allow sorting out meat with visual defects without downgrading the whole batch.	0	+	+
Definitions of poultry	Introduce the necessary definitions following	–	++	++

		Streamlining/ simplification	Addressing new needs	Reinforce sustainability
products (Annex 9 B.8)	closely the corresponding definitions for chicken meat of the United Nations Economic Commission for Europe (UNECE).			
ORTs for other animals (Annex 9 B.9)	Do not introduce ORTs for animals other than poultry as there is, at this stage, no need or EU added value for a specific marketing standard to regulate such ORTs.	0	0	+
<b>Arable crops and olive oil</b>				
Sales in bulk of olive oil (Annex 9 C.1)	Allow MSs to adopt national rules for the bulk sale of olive oil under strict conditions that guarantee safety and quality.	0	++	+
Plant-based preparations (Annex 9 C.2)	Keep the status quo as the co-legislator had already extensive discussions on that topic during the process of amending the CMO Regulation and decided to keep the status quo.	n/a	n/a	n/a
Origin of pulses (Annex 9 C.3)	Require the labelling of the country of origin of pulses.	—	++	++

Note: — very negative, – negative, 0 no change or marginal, + positive, ++ very positive

As regards **efficiency**, Table 4 summarises, from a qualitative standpoint, the impacts of the preferred option for the revision of the various standards as referred to in Section 10 and Annex 9:

*Table 4 - The costs-benefit impacts of the specific objectives given the revisions*

		Costs	Benefits
<b>Horticultural products</b>			
Definition of cider and perry (Section 10.1)	Introduce a new EU standard with detailed rules for the marketing of cider and perry, including a definition of cider and of perry, and complemented by ORTs.	+	+
Reduced-sugar fruit juice (Section 10.2)	Make it possible for fruit juice to be labelled as having ‘reduced sugar’ content to target practices that can remove natural fruit sugar in the juice.	+	++
Added sugar in jams & jellies (Section 10.3)	Increase the required fruit content in jams and jellies.	+	++
Existing F&V legislations (Annex 9 A.1)	Merge the current rules of F&V, bananas and dried grapes where technically and legally possible.	0	+
Origin labelling of exempted F&V (Annex 9 A.2)	Revise the current exemption for nuts, dried fruit and some minor products in the standard.	+	+
‘Ready to eat’ F&V (Annex 9 A.3)	Clarify the definition of products that have undergone trimming or cutting and obligation of origin labelling.	0	+
‘Ugly’ F&V (Annex 9 A.4)	Bolster derogations to the marketing standard for F&V insofar as products with cosmetic defects are concerned.	0	+
‘Force majeure’ exemption for F&V	Include a temporary exemption to the application of marketing standard for F&V in cases of ‘force	0	++

		Costs	Benefits
(Annex 9 A.5)	majeure’.		
Sugar content in fruit nectar (Annex 9 A.6)	Adapt the nutritional claims regarding sugar content on the front-of-pack label for fruit juice and nectars so as to reduce the risk of consumer confusion.	+	++
Use of the term ‘marmalade’ (Annex 9 A.7)	Authorise the use of the term ‘marmalade’ to designate jam.	+	+
<b>Animal products</b>			
Origin of honey blends (Section 10.4)	Require the labelling of the country of origin for the blends of honeys.	+	+
Liver weight for foie gras (Section 10.5)	Maintain the existing marketing standard unchanged, i.e. force-feeding to ensure the minimum liver weight will remain necessary, but consumers will not be potentially misled.	n/a	n/a
Use of free-range areas (Annex 9 B.1)	Amend the marketing standard to authorise solar panels to be used for ‘free range’ areas where this does not interfere with the content of the message to of the optional reserved term used.	+	+
Egg standards & organic rules (Annex 9 B.2)	Align egg marketing standards with rules for organic eggs.	0	+
Minimum durability of eggs (Annex 9 B.3)	Abolish specific provisions on the minimum durability for eggs, hence leaving the matter to EU horizontal rules on date marking under FIC (to be revised under F2F).	0	+
Marking of eggs (Annex 9 B.4)	Compulsory marking of eggs on farm as general rule; in justified cases, the legislation could allow for a derogation to the subsequent stage of the chain.	0	+
ORTs for poultrymeat (Annex 9 B.5)	Maintain current system but allow flexibility and make limited adjustments in the definition of the types of production system; the use of other terms indicating other types of production systems at national level should be allowed.	0	+
Water content in poultrymeat (Annex 9 B.6)	Maintain the current limits for water content in poultrymeat and not accommodate the increasing intrinsic water contained in birds of fast-growing poultry breeds by loosening the total water limit.	0	+
Downgrading of poultrymeat (Annex 9 B.7)	Clarify provisions on inspections to allow sorting out meat with visual defects without downgrading the whole batch.	0	++
Definitions of poultry products (Annex 9 B.8)	Introduce the necessary definitions following closely the corresponding definitions for chicken meat of the United Nations Economic Commission for Europe (UNECE).	0	+
ORTs for other animals (Annex 9 B.9)	Do not introduce ORTs for animals other than poultry as there is, at this stage, no need or EU added value for a specific marketing standard to regulate such ORTs.	0	0
<b>Arable crops and olive oil</b>			
Sales in bulk of olive oil (Annex 9 C.1)	Allow MSs to adopt national rules for the bulk sale of olive oil under strict conditions that guarantee safety and quality.	0	+
Plant-based	Keep the status quo as the co-legislator had already	n/a	n/a

		Costs	Benefits
preparations (Annex 9 C.2)	extensive discussions on that topic during the process of amending the CMO Regulation and decided to keep the status quo.		
Origin of pulses (Annex 9 C.3)	Require the labelling of the country of origin of pulses.	+	+
<b>Overall net tendency</b>		+ (9)	+ (26)

Note: Where no monetary quantification was possible, impacts are provided in qualitative terms, indicating general trends (0 no or only negligible change, + medium, ++ high).

Finally, in terms of **coherence with other policy initiatives**, as discussed in the Staff Working Document, the assessment had not identified cross-sectoral unintended or unexpected effects. This is not altogether surprising as marketing standards pursue objectives that are different from those underpinning other policy measures, such as for example EU health rules or animal welfare rules applying to agricultural products. Table 5 summarises, from a qualitative standpoint, the coherence of the preferred options with overarching policies, based on the respective discussions for each revision in Section 10 and Annex 9.

*Table 5 - Coherence of the policy options with overarching objectives of EU policies*

		Green Deal	Animal welfare	FIC
<b>Horticultural products</b>				
Definition of cider and perry (Section 10.1)	Introduce a new EU standard with detailed rules for the marketing of cider and perry, including a definition of cider and of perry, and complemented by ORTs.	+	0	++
Reduced-sugar fruit juice (Section 10.2)	Make it possible for fruit juice to be labelled as having ‘reduced sugar’ content to target practices that can remove natural fruit sugar in the juice.	++	0	++
Added sugar in jams & jellies (Section 10.3)	Increase the required fruit content in jams and jellies.	++	0	0
Existing F&V legislations (Annex 9 A.1)	Merge the current rules of F&V, bananas and dried grapes where technically and legally possible.	0	0	0
Origin labelling of exempted F&V (Annex 9 A.2)	Revise the current exemption for nuts, dried fruit and some minor products in the standard.	+	0	++
‘Ready to eat’ F&V (Annex 9 A.3)	Clarify the definition of products that have undergone trimming or cutting and obligation of origin labelling.	+	0	+
‘Ugly’ F&V (Annex 9 A.4)	Bolster derogations to the marketing standard for F&V insofar as products with cosmetic defects are concerned.	++	0	0
‘Force majeure’ exemption for F&V (Annex 9 A.5)	Include a temporary exemption to the application of marketing standard for F&V in cases of ‘force majeure’.	+	0	0
Sugar content in fruit nectar (Annex 9 A.6)	Adapt the nutritional claims regarding sugar content on the front-of-pack label for fruit juice and nectars so as to reduce the risk of consumer confusion.	++	0	+
Use of the term	Authorise the use of the term ‘marmalade’ to	0	0	++

		Green Deal	Animal welfare	FIC
'marmalade' (Annex 9 A.7)	designate jam.			
<b>Animal products</b>				
Origin of honey blends (Section 10.4)	Require the labelling of the country of origin for the blends of honeys.	+	0	++
Liver weight for foie gras (Section 10.5)	Maintain the existing marketing standard unchanged, i.e. force-feeding to ensure the minimum liver weight will remain necessary, but consumers will not be potentially misled.	n/a	n/a	n/a
Use of free-range areas (Annex 9 B.1)	Amend the marketing standard to authorise solar panels to be used for 'free range' areas where this does not interfere with the content of the message to of the optional reserved term used.	++	++	0
Egg standards & organic rules (Annex 9 B.2)	Align egg marketing standards with rules for organic eggs.	0	–	0
Minimum durability of eggs (Annex 9 B.3)	Abolish specific provisions on the minimum durability for eggs, hence leaving the matter to EU horizontal rules on date marking under FIC (to be revised under F2F).	0	+	0
Marking of eggs (Annex 9 B.4)	Compulsory marking of eggs on farm as general rule; in justified cases, the legislation could allow for a derogation to the subsequent stage of the chain.	+	0	++
ORTs for poultrymeat (Annex 9 B.5)	Maintain current system but allow flexibility and make limited adjustments in the definition of the types of production system; the use of other terms indicating other types of production systems at national level should be allowed.	+	0	+
Water content in poultrymeat (Annex 9 B.6)	Maintain the current limits for water content in poultrymeat and not accommodate the increasing intrinsic water contained in birds of fast-growing poultry breeds by loosening the total water limit.	+	++	++
Downgrading of poultrymeat (Annex 9 B.7)	Clarify provisions on inspections to allow sorting out meat with visual defects without downgrading the whole batch.	+	0	0
Definitions of poultry products (Annex 9 B.8)	Introduce the necessary definitions following closely the corresponding definitions for chicken meat of the United Nations Economic Commission for Europe (UNECE).	+	0	++
ORTs for other animals (Annex 9 B.9)	Do not introduce ORTs for animals other than poultry as there is, at this stage, no need or EU added value for a specific marketing standard to regulate such ORTs.	0	0	0
<b>Arable crops and olive oil</b>				
Sales in bulk of olive oil (Annex 9 C.1)	Allow MSs to adopt national rules for the bulk sale of olive oil under strict conditions that guarantee safety and quality.	+	0	0
Plant-based preparations (Annex 9 C.2)	Keep the status quo as the co-legislator had already extensive discussions on that topic during the process of amending the CMO Regulation and decided to keep the status quo.	n/a	n/a	n/a
Origin of pulses	Require the labelling of the country of origin of	++	+	++

(Annex 9 C.3) pulses.

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Note: — harmful, – negative, 0 neutral, + coherent, ++ contributes

## 8. PREFERRED OPTION

Given the heterogeneous nature of the different individual revisions, which cover different marketing standards for different products in different sectors, there is no one preferred option for the overall initiative; the preferred options for each of the different individual revisions are described in the assessments of each of the revisions (Section 10).

## 9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

Monitoring and evaluation are two key linked activities for reviewing EU policies, but need to be clearly distinguished.

Monitoring is the set of techniques that enable to analyse, check and control the functioning of marketing standards' rules throughout a certain period of time.

Given the complexity of the initiative, which consists of different individual revisions covering different products in different sectors and different types of marketing standards, and given the lack of available data sources, implementing a monitoring system for 'marketing standards' in general would not be proportionate. Instead, the monitoring of each marketing standard will be undertaken by the Commission at a disaggregated level. Therefore, the monitoring for each of the different individual revisions is described in the assessments of each of these revisions (in the last paragraph of each of the five sub-sections of Section 10) where proportionate solutions are proposed and the development of alternative data sources is described. This will enable to acquire more data that would add up to the data sources currently available and ensure recurrent update, review, improvement and modernisation of the system throughout time by means of a data-based approach.

Evaluation relates to the question whether the tool of marketing standards achieves the policy objectives.

Marketing standards are subject to the 'evaluate first principle' (Articles 75(5)(c) and 75(6) CMO), according to which an evaluation is necessary before proposing amendments. The Evaluation was shared with the European Parliament and the Council. An evaluation will precede future amendments, in line with the Better Regulation agenda and with the Commission's commitment to regularly evaluate EU activities. A broader evaluation of the overall initiative may possibly be considered after adoption by legislators of the new framework law for sustainable food systems, in particular if it appears necessary with a view to reviewing marketing standards against a future framework law for sustainable food systems. This would be without prejudice to the evaluation systems to be put in place separately for each marketing standard, which is differentiated for each marketing standard, as discussed in last paragraph of each of the five sub-sections of Section 10.

A useful element to contribute to the adequate monitoring and evaluation of agricultural marketing standards is constituted by the activity regularly carried out within the Civil Dialogue Groups (CDGs). CDGs assist the Commission and help to hold a continuous

dialogue on all matters relating to the CAP, particularly in their configurations to discuss issues relating to arable crops and animal products<sup>33</sup>.

## **10. ASSESSMENT OF INDIVIDUAL REVISIONS**

While several revisions are part of this initiative, most represent minor changes for which it would be disproportionate to carry out a comprehensive assessment; these revisions are discussed briefly in Annex 9. The criterion to distinguish between marketing standards that are examined in Section 10 and those that are included in Annex 9 depends on the expected magnitude of the modification's impact. In Section 10 are discussed the changes that meet at least two out of the three following indicators:

- expectations over possible significant impacts (or possibility to identify such impacts ex-ante), including with regard to their novelty (e.g. the introduction of a new marketing standard for cider or the inclusion of reduced-sugar juices in the marketing standard for juices);
- existence of actual policy choices (such as in all marketing standards examined in Section 10);
- political sensitivity that goes beyond the mere technical nature of the amendment (e.g. changes to the marketing standard for foie gras, origin labelling of honey blends, or changes to the sugar level in jams).

The respective assessment is based on the inputs received and consultations carried out throughout the Better Regulation process.

Despite the diversity of products and sectors concerned, this Impact Assessment addresses the current revision of agricultural marketing standards as a whole, particularly in the light of the following:

- their unitary consideration by the F2F Strategy, under the umbrella of one same Action: covering several marketing standards within one same initiative will overall enhance consistency of the policies;
- the fact that the CMO Regulation lays down common rules for all marketing standards;
- the fact that the objectives of this revision, namely sustainability, simplification and lisbonisation, are common to several marketing standards and should thus be considered together.

### **10.1. Marketing standards for cider and perry**

According to a 2019 Euromonitor briefing<sup>34</sup>, Western Europe is the world's largest cider region in terms of consumption (52% of global volume, 1.2 billion litres in 2017). The UK is the largest cider market in Western Europe (71% of volume, 848 million litres). Within the EU, cider (including perry<sup>35</sup>) is traditionally produced in France, Germany, Austria, Belgium, Denmark, Spain, Finland, Ireland, Italy, Poland and Sweden. Cider experienced the fastest relatively recent growth in Portugal, Greece and Germany (respectively 56%, 35% and 21% between 2012 and 2017).

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<sup>33</sup> [https://agriculture.ec.europa.eu/common-agricultural-policy/cap-overview/committees-and-expert-groups/civil-dialogue-groups/cdg-explained\\_en](https://agriculture.ec.europa.eu/common-agricultural-policy/cap-overview/committees-and-expert-groups/civil-dialogue-groups/cdg-explained_en)

<sup>34</sup> Euromonitor, Passport – Cider in Western Europe- June 2019.

<sup>35</sup> Perry is made from pears.

In terms of market size, Euromonitor data indicates that the market for cider and perry in EU28 in 2019 was about EUR 6.2 billion<sup>36</sup> (EUR 2.3 billion across EU 27).<sup>37</sup> and if Western Europe is about half the global market, this means that according to this estimate its cider market was about EUR 6.4 billion, thus corroborating the Euromonitor estimate.

Experts foresee growth perspectives for the product in the coming years in Western Europe, driven by a tendency to premium quality, health and wellness and consumers' desire to explore new flavours<sup>38</sup>. While the UK market is expected to grow modestly due to its maturity, cider markets such as in Greece, Germany, Türkiye and Italy are expected to enjoy double-digit growth, albeit growing from a small base.

Overall, the importance of the sector and industry is significant. For instance, the direct members of the European cider and fruit wine association (AICV) represent over 180 cider and fruit wine manufacturing companies in Europe. Most of them are relatively modest in size, although there are some large producers, mainly in the UK, France, the Netherlands, Denmark, Ireland, Spain and Germany<sup>39</sup>. Over 5000 people are directly employed in the cider and fruit wine industries and the sector generates many indirect jobs, mainly in the agricultural sector through the production of apples and other fruits<sup>40</sup>.

COMEXT data show that imports from outside the EU27 increased between 2012 and 2019 from 8 to 23 million litres and then decreased to reach 15 million litres in 2021. The imports in value followed a similar trend (14 million € in 2012 – 13 million € in 2021). Exports outside the EU27 have been increasing in the last ten years, from about 54 million litres in 2012 to 163 million litres in 2021 (with pre-COVID levels around 250 million litres); the exports value increased as well, although slightly slower due to decreasing prices. Trade within the EU27 has instead remained rather stable around 120-130 million litres, with some substitution between categories (decrease of the sparkling cider and perry and increase in the still products whether in bottles or larger containers); value however has been decreasing, due to a constant price decline all along the period, affecting all the categories. In this situation of price decline, a new standard should provide companies with an opportunity for a clear market segmentation and create value for their products.

Because of the novelty of such a standard and the fact that policy choices will need to be made, it is considered essential to provide in this Section details on various options for the design of this standard and on their respective economic, social and environmental impacts.

#### *10.1.1. Problem definition*

Currently no market standard for cider and perry exists at EU level (see more detailed explanation below) and the creation of one would certainly have an impact on the economic operators in the sector, as well as on producers of the raw material and on

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<sup>36</sup> Extracted from Euromonitor Passport data for alcoholic drinks, category 'Cider/Perry', total value retail selling price in current prices, aggregated over all MSs.

<sup>37</sup> <https://www.prnewswire.com/news-releases/cider-market-to-garner-26-21-bn-globally-by-2031-at-5-0-cagr-allied-market-research-301492420.html>.

<sup>38</sup> Euromonitor, Passport – Cider in Western Europe- June 2019.

<sup>39</sup> <https://aicv.org/en/members>.

<sup>40</sup> <https://aicv.org/en/industry-data>.



consumers. This marketing standard has therefore been prioritised for a more detailed assessment in this Section as it is paramount to identify the various actors affected by an EU standard, identify the possible options, the value added, and the pros and cons of each of them to support a well-informed choice.

The terms ‘cider’ and ‘perry’ are currently used in the EU for a multitude of beverages with different key characteristics. For instance, various types of products, from pre-mix products with added sugars to alcopops<sup>41</sup> with 5% to 100% apple juice are labelled as ‘cider’. This leads to conditions of unfair competition among producers as not all consumers readily discern the differences of the products that are sold as ‘cider’ or ‘perry’. National standards in certain MSs may apply to home-grown production but do not apply to products imported from other MSs due to the freedom of movement of goods in the Single Market. Imported products must comply with the different standards of the MS of sales.

The exact magnitude of the problem cannot be quantified in financial terms as the limited available data on production and trade does not distinguish between the various categories of products marketed under the generic terms ‘cider’ and ‘perry’.<sup>42</sup> Nevertheless, AICV, the European Cider and Fruit Wine Association, confirmed that the issue is linked to the absence of a marketing standard in a letter that it sent to the European Commission in 2015, inviting it to address the identified risks by establishing a marketing standard regulating basic elements of cider and perry. The issue was also identified in a 2020 study on the ‘Evaluation of marketing standards contained in the CMO Regulation, the ‘Breakfast Directives’ and CMO secondary legislation’<sup>43</sup> as well as in the replies and contributions received during the public consultation on the revision of the EU agricultural marketing standards.

Specific questions on the cider sector in the questionnaire of the public consultation yielded between 26 and 33 replies, depending on the question. Only a minority of these respondents favoured keeping the status quo. A majority of respondents indicated a preference for the addition of optional reserved terms (ORTs), followed by the establishment of a marketing standard (more or less strict).

The Commission also received nearly a dozen written contributions from public authorities and from the cider sector. One of them<sup>44</sup> favours the setting up of a basic marketing standard, while the others<sup>45</sup> ask for more ambitious rules (minimum percentage of apple/pear juice) to be established.

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<sup>41</sup> Any kind of flavoured alcoholic beverages with relatively low alcohol content.

<sup>42</sup> The available data aggregate the various categories of cider at best under 3 different categories (COMEXT), but most often under 1 single category. So, the market sizes indicated above correspond to the various categories of ciders grouped into one.

<sup>43</sup> <https://doi.org/10.2762/475831>

<sup>44</sup> AICV.

<sup>45</sup> French Ministry of Agriculture, Syndicat national des transformateurs cidricoles (FR), Fédération nationale des producteurs de fruits à cidre (FR), Syndicat des cidriers indépendants de France, Cidrerie du Pays d’Auray (FR), Maison cidricole de Normandie (FR), The Cider Mill (IE), Stonewell Cider (IE), EU citizen (IE), Bryggeriforeningen (DK).

The terms ‘cider’ and ‘perry’ are used as generic terms also in the absence of an international definition. They cover a multitude of products with different characteristics<sup>46 47</sup>.

There are, however, standards for these products in some MSs. They mainly differ according to the following key criteria, which have a strong impact on the production costs and the quality of the product<sup>48</sup>:

- The minimum content of apple/pear juice (including juice and/or concentrate) in the cider/perry (varying from no specifications of minimum juice content to 100% depending on the MS);
- The minimum content of ‘fresh’ apple/pear juice (i.e. excluding concentrate) in the cider/perry (up to 50% in FR);
- The addition of water or not;
- The addition of sugar to the apple/pear juice before fermentation (i.e. ‘chaptalisation’) or not;
- The addition of alcohol (i.e. ‘fortification’) or not.

Some MSs have cider-specific detailed mandatory standards in place and also have labelling rules which allow identifying quality and origin such as Protected Designation of Origin (PDO), Protected Geographical Indication (PGI) (e.g. France, Spain).

Some MSs have cider-specific, ‘base-level’ marketing standards (e.g. Denmark, Finland, Slovakia, Sweden). In Sweden, for example, 15% minimum of the fermented cider should come from apple juice.

Several MSs do not have cider marketing standards: e.g. Belgium, Bulgaria, Germany, Ireland and the Netherlands. In Germany, production guidelines have been developed by the cider sector. They are complemented by labelling rules under the German legislation.

In the absence of any EU specification of what ‘cider’ and ‘perry’ label carrying products denote, the issue of fair competition for producers would remain and the asymmetry of information for consumers would not be addressed.

Introducing an EU marketing standard for cider and perry would allow defining the essential (minimum) requirements to be met by the products concerned, thereby contributing to a level playing field among producers. It would also enhance consumers’ trust in beverages bearing the denominations ‘cider’ and ‘perry’ and enhance the products’ value. If sufficiently ambitious, such a standard can be expected to add value and strengthen the authentic character of cider and perry as craft products. The marketing standard could also define a range of parameters (e.g. product names or ORTs), their corresponding technical characteristics (e.g. authorised treatments and substances), and define the raw materials authorised for their production on the model of the legislation concerning oenological practices or fruit juices. Products would have to comply with

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<sup>46</sup> Areté et al. (2020). *Evaluation of marketing standards contained in the CMO Regulation, the ‘Breakfast Directives’ and CMO secondary legislation*. Brussels: European Commission. <https://doi.org/10.2762/475831>.

<sup>47</sup> The only regulated elements at international level are food additives permitted in the production of cider through Codex Alimentarius and EU legislation.

<sup>48</sup> Ricome, Solano & Ciaian (2022). Benefits and costs of EU marketing standards in the cider sector. Results from interviews with stakeholders (2022).

specific labelling rules depending on their composition or production process as a complement to those already provided by the food information to consumers regulation.

### 10.1.2. Options to achieve the objectives

#### Baseline

Currently, there are no specific rules governing the marketing of cider and perry at the EU level. The situation remains as described under Section 10.1.1. The CMO Regulation<sup>49</sup> empowers the Commission to issue delegated acts for setting marketing standards for new products in order to take into account the expectations of consumers and the need to improve the quality and the economic conditions for the production and marketing of agricultural products.

#### Policy Options

**Option I:** This Option consists of defining optional reserved terms (ORTs), without setting up marketing standards as such at the EU level. Those terms could be used only if certain product conditions to be set in the legislation are met. Proposed ORTs are indicated below. The ORTs can direct consumers towards higher quality products<sup>50</sup> or help them make purchasing decisions on the basis of the sugar content (similarly to wines).

National rules, insofar as they exist, as well as the use of the generic terms ‘cider’ and ‘perry’ for a variety of products would remain largely unchanged.

#### ORTs related to higher quality:

- ‘Made from pure fresh juice’ (100% fresh apple or pear juice, or a mixture of both);
- ‘Farmhouse’ (made from pure fresh juice + fruits must be processed on farm);
- ‘Craft’ (made from pure fresh juice, no use of industrial processes, no overpressing<sup>51</sup>);
- ‘Natural effervescence’ (originating exclusively from the alcoholic fermentation).

#### ORTs related to sugar content:

- ‘Dry’ (maximum [X] g/l residual sugars);
- ‘Semi-dry’ (above [X] g/l and maximum [Y] g/l residual sugars);
- ‘Sweet’ (above [Y] g/l residual sugars)<sup>52</sup>.

**Option II:** This Option consists of establishing a basic marketing standard at the EU level, covering *inter alia* the origin of alcohol in cider and perry (fruit). It leaves the definition of more demanding requirements to MSs; such a standard would be complemented by ORTs. This would ensure a baseline harmonisation at EU level while remaining complementary to existing national rules.

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<sup>49</sup> Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products.

<sup>50</sup> Article 84 of Regulation (EU) No 1308/2013.

<sup>51</sup> French technical term: ‘rémiage’.

<sup>52</sup> X and Y to be determined in consultation with MSs in the Expert Group.

In the following it is illustrated how such an approach could be operationalised:

#### Definition of cider:

Cider means the product which is obtained from the partial or complete alcoholic fermentation of:

- 1.the juice of fresh apples, or
- 2.the reconstituted juice of concentrate made from the juice of apples, or
- 3.a mixture of the juices referred to in points 1 and 2.

The content in apple juice, by weight of the finished product, is not specified.

The following ingredients and food additives could be added:

- potable water and sugars, before or after fermentation;
- fresh or reconstituted apple juice after fermentation;
- a limited volume of fresh or reconstituted pear juice, before or after fermentation;
- natural flavourings (apple and pear);
- food additives permitted by the EU legislation.

The product may be un-carbonated or carbonated by fermentation or by injection of carbon dioxide.

Fortification of cider by the addition of distilled alcohol is not permitted.

A dealcoholised cider contains no more than 0.5% alcohol by volume (abv).

A partially dealcoholised cider contains more than 0.5% abv and no more than 1.2% abv. This definition excludes all fruit wines, fruit spirits and alcohol fortified fruit wine-based products.

#### Definition of perry:

Perry means the product which is obtained from the partial or complete alcoholic fermentation of:

- 1.the juice of fresh pears, or
- 2.the reconstituted juice of concentrate made from the juice of pears, or
- 3.a mixture of the juices referred to in points 1. and 2.

The content in pear juice, by weight of the finished product, is not specified.

The following ingredients and food additives could be added:

- potable water and sugars, before or after fermentation;
- fresh or reconstituted pear juice, after fermentation;

- a limited volume of fresh or reconstituted apple juice, before or after fermentation;
- natural flavourings (apple and pear);
- food additives permitted by EU legislation.

The product may be un-carbonated or carbonated by fermentation or by injection of carbon dioxide.

Fortification of perry by the addition of distilled alcohol is not permitted.

A dealcoholised perry contains no more than 0.5% abv.

A partially dealcoholised perry contains more than 0.5% abv and no more than 1.2% abv. This definition excludes all fruit wines, fruit spirits and alcohol fortified fruit wine-based products.

ORTs complementing the marketing standard for cider and perry:

- Made from pure fresh juice;
- Farmhouse;
- Craft;
- Natural effervescence;
- Dry;
- Semi-dry;
- Sweet.

**Option III:** This Option consists of establishing a more ambitious standard, leading to a higher level of harmonisation within the EU. ORTs would complement those rules.

This Option requires that the cider and perry are made from a minimum percentage of fruit juice (fresh and/or reconstituted).

**Definition of cider:** Cider means the product which is obtained from the partial or complete alcoholic fermentation of:

1. the juice of fresh apples, or
2. the reconstituted juice of concentrate made from the juice of apples, or
3. a mixture of the juices referred to in points 1. and 2.

A cider must contain, by weight of the finished product, not less than 50% apple juice as referred to under points 1 to 3 above. The 50% corresponds to the middle ground of current national rules, which vary from no specification of minimum juice to 100%.

The remainder of the volume may come from the addition of:

- a limited volume of potable water and sugars, before or after fermentation;
- a limited volume of fresh or reconstituted pear juice, before or after fermentation;
- a limited volume of fresh or reconstituted apple juice, after fermentation;

- natural flavourings (apple and pear);
- food additives permitted by EU legislation.

The product may be un-carbonated or carbonated by fermentation or by injection of carbon dioxide.

Fortification of cider by the addition of distilled alcohol is not permitted.

A dealcoholised cider contains no more than 0.5% abv.

A partially dealcoholised cider contains more than 0.5% abv and no more than 1.2% abv. This definition excludes all fruit wines, fruit spirits and alcohol fortified fruit wine-based products.

Definition of perry: Perry means the product which is obtained from the partial or complete alcoholic fermentation of:

- 1.the juice of fresh pears, or
- 2.the reconstituted juice of concentrate made from the juice of pears, or
- 3.a mixture of the juices referred to in points 1. and 2.

A perry must contain, by weight of the finished product, not less than 50% pear juice as referred to under points 1 to 3 above.

The remainder of the volume may come from the addition of:

- a limited volume of potable water and sugars, before or after fermentation;
- a limited volume of fresh or reconstituted apple juice, before or after fermentation;
- a limited volume of fresh or reconstituted pear juice, after fermentation;
- natural flavourings (apple and pear);
- food additives permitted by EU legislation.

The product may be un-carbonated or carbonated by fermentation or by injection of carbon dioxide.

Fortification of perry by the addition of distilled alcohol is not permitted.

A dealcoholised perry contains no more than 0.5% abv.

A partially dealcoholised perry contains more than 0.5% abv and no more than 1.2% abv. This definition excludes all fruit wines, fruit spirits and alcohol fortified fruit wine-based products.

ORTs complementing the marketing standard:

- Made from pure fresh juice;
- Farmhouse;
- Craft;
- Natural effervescence;

- Dry;
- Semi-dry;
- Sweet.

The three options will contribute to the F2F objective of better informing consumers about the characteristics of the food they purchase (social sustainability). This is achieved by way of reserving the use of the ales designation to compliant products and creating transparency about their characteristics. The options have the potential to improve the quality of cider and perry sold to consumers and to let consumers discern quality differences of the said products in a convenient way. It is expected that producers will thus be able to derive a better income from their cider and perry products, as can be seen for instance in the case of products benefiting from quality labels – organic and geographical indications (economic sustainability). A higher quality for cider and perry is to a certain extent linked to the use of more traditional production methods for apples/pears<sup>53</sup> and cider/perry which co-generate environmental advantages compared with that of more industrial methods (environmental sustainability). More details on sustainability aspects are provided in the sections below.

### *10.1.3. Impacts of the different policy options*

#### **Likely economic impacts**

##### *Benefits of an EU marketing standard for cider and perry*

The expected general benefits of the introduction of an EU marketing standard for cider and perry as compared to the status quo include the following:

- Improvement of the overall coherence of the regulatory framework applying to cider and perry production and marketing across the EU, thus facilitating intra-EU trade and ensuring a level playing field for producers. Clear rules about the products and labelling will reduce trade uncertainties and transactional costs for economic operators.
- Better product identification and building of reputation and trust in the sales designation and segmentation into categories differentiating relatively inexpensive mass consumption cider/perry (industrial mix of apple/pear juice, alcohol, water, flavourings, sugar) from quality or traditional cider/perry (fermented pure apple/pear juice). Market segmentation can lead to improved satisfaction of consumer demand and added value accruing in the sector.
- Better valorisation of local and EU apple and pear production, particularly if a minimum content of fresh apple or pear juice is fixed in the standard or specific ORTs related to the fruit or juice contents are introduced.

In addition, in a recent study, the JRC identifies the following benefits<sup>54</sup>:

- Transaction cost savings, because an EU marketing standard would:

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<sup>53</sup> Traditional production of cider occurs primarily among small producers who use their own apples which they tend to produce extensively. A more industrial production of cider would rely more on intensively produced apples in order to feed the industrial process.

<sup>54</sup> Ricome, Solano & Ciaian (2022). Benefits and costs of EU marketing standards in the cider sector. Results from interviews with stakeholders.

- facilitate the functioning of the cider/perry supply chain;
  - facilitate business to business transactions;
  - reduce barriers to trade, within and outside the EU;
  - reduce misleading information related to the production of cider/perry, and therefore provide better information to consumers;
  - limit the negative impact resulting from the national regulations that several MSs have introduced to accompany the growth of the cider/perry sector.
- Potentially unfair competition between EU and non-EU ciders/perries would be reduced.
  - The introduction of a marketing standard for cider and perry falls under the definition of technical regulation of the WTO Agreement on Technical Barriers to Trade (TBT Agreement). Therefore, the TBT Agreement applies to these requirements. The TBT Agreement provides in particular that “technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective” and follow a principle of non-discrimination against imports from third countries. The proposed measure (option III) does not imply any discrimination between domestic and imported products and in scope is not more trade restrictive than necessary to fulfil its objectives, namely to inform consumers and improve the level playing field for producers. There is no other less trade restrictive option contributing to the same extent to the policy objective in question.
- In the absence of an EU marketing standard, operators may produce cider/perry in MSs which have little regulation and sell it in more highly regulated MSs, notwithstanding national standards as applied in some MSs to national products (reverse discrimination is not prohibited by Single Market law).
  - An EU marketing standard would reduce or eliminate the diverging legal differences governing the marketing of cider/perry products (by removing part of or all differences between standards across MSs). It could also contribute to lessening the proliferation of private marketing standards.
  - Sparkling alcoholic beverages using fermented sugar as ingredients are emerging. If they contain a small quantity of fermented apple or pear juice, they can use, in the absence of an EU marketing standard, the name ‘cider’ or ‘perry’ or related claims. This undermines loyal competition and can mislead consumers about the nature of the product.
  - Such general benefits would apply to all three Options, however with increasing benefits as the requirements increase from Option I to Option III.
  - The specific benefits of ORTs (Option I) and a basic marketing standard (Option II) as compared with the status quo can be identified, as follows:
    - creating value for the sector by way of market segmentation;
    - supporting growth of the sector and more easily competing against other alcoholic beverages (beer, alcopops);
    - allowing consumers to have discernible product diversity and thus the ability to easily differentiate higher quality products.
  - A more ambitious standard (Option III) is expected, in addition to the benefits of Options I and II, to further increase the value added for the producers meeting its requirements, and guarantee a higher level of quality (i.e. minimum content of apple or pear juice) applying to all products labelled ‘cider’ and ‘perry’. This Option would thus benefit the market segment of traditional producers who often integrate in local supply chains with fewer intermediaries (fruit juice concentrate industries and



secondary processing industries producing industrial cider/perry) between producer and consumer<sup>55</sup>. It would also respond to the increasing demand for shortened supply chains, as mentioned in the F2F strategy.

The experience of Quebec, as reported in the written contribution of the Syndicat des Cidriers Indépendants de France, is demonstrative of the dynamics of cider production with or without marketing standards. In Quebec, a region traditionally known for the quality of its cider, the sector suffered from industrial overproduction as from the 1970s when cider was officially re-introduced in Quebec after several years of prohibition. The offer of cider grew very rapidly, in particular due to an industrial production which created difficulties for traditional producers. Cider was mass-produced, at low cost, and at a mediocre quality and health issues were reported due to industrial production methods. The result was a drastic fall in consumption. As a result of the problems encountered, the production of cider in Quebec is now governed by strict rules. The cider manufactured in Quebec must derive from at least 80% of juice extracted from apples harvested in Quebec, in addition to respecting various definitions, production conditions and labelling. Since the introduction of this strict framework, sales of cider from Quebec have steadily increased over the years.

#### *Costs of an EU marketing standard for cider/perry*

The JRC study points to the following potential costs of introducing a marketing standard for cider/perry:

- Higher costs are likely to occur for producers (within and outside the EU) that currently produce according to lower standards if they would like to continue to sell their product with the name “cider”. These producers have always the choice not to upgrade their production to the new standard and sell their product under a name different from cider/perry; this may mean a deterioration of the commercial value of their product or at least additional initial costs in terms of marketing. Therefore, the segment of lower quality cider/perry may incur losses in market shares should stricter standards be implemented (especially Option III, to a lower extent Options I and II). Having said this, the industrial manufacturers producing these kinds of beverages are often active in other beverage markets and products and could adapt their marketing strategy.
- The marketing standard according to Option III may limit innovation possibilities for products sold under the name ‘cider’ to adjust the product to what consumers may demand (e.g. flavoured ciders);
- The more prescriptive the standard, the more significant the costs for certain operators now invested in lower quality ‘industrial’ cider. Having said this, such products and other innovative ones can continue to be marketed, albeit under other trade names than ‘cider’ or ‘perry’.

#### **Likely impact on SMEs and competitiveness**

Traditional and craft ciders/perries are mostly produced by SMEs<sup>56</sup>. These stand to benefit from harmonised and detailed rules in the EU, especially if such rules allow a

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<sup>55</sup> While there is no definition of traditional cider, it is generally understood that traditional (and craft) refer to methods of production implemented by small producers, excluding the use of industrial processes. This would include i.a. 100% fresh apple juice, no pasteurisation, no use of additives (e.g. Arabic gum to create artificial turbidity).

clear differentiation of the various types of ciders and perries in the market and, a fortiori, if certain minimum requirements applied that allowed consumers to distinguish such drinks from other products. In addition, the existence of a marketing standard should lead to a more level playing field, lower transaction costs and reduced barriers to trade, including in relation to international trade. The magnitude of the benefits is a function of the ambition as represented by the three Options: lowest under Option I, highest under Option III. On the other hand, companies producing lower quality ciders/perries - albeit often produced by larger industrial facilities - could be negatively affected by the marketing standard if consumers demanded less of their products because of the orientation effect towards higher quality beverages that the standard would induce. Costs would also arise for these companies if they decided to meet the higher requirements stemming from the standard in order to be able to keep using the sales designation.

### **Likely social impacts**

While the main objective of the proposed Options is of an economic nature, i.e. to facilitate the development of the sector and the efficiency of the single market, a marketing standard for cider and perry would bring more homogeneous information on the characteristics and the quality of cider and perry, therefore improving consumer information (ranked Options: III > I/II). This would also contribute to the objective of F2F to empower consumers to make informed food choices. This is important, considering that cider and perry include alcohol, even if to a lower extent than other products.

Cider and perry are indeed favoured by consumers looking for beverages with a lower alcohol content and could be suitable for vegan consumers or consumers intolerant to cereals (unlike wine and beer)<sup>57</sup>.

Traditional cider/perry production is often located in rural areas. It therefore supports rural economies and rural employment<sup>58</sup>. If more local apples and pears are used to produce cider and perry due to the introduction of the marketing standard, this would benefit local producers. Furthermore, it may contribute to improved employment, as it is more labour intensive than large-scale industrial production<sup>59</sup>. The more ambitious the standard is formulated, the more local producers stand to benefit from it, the higher the territorial impact in rural areas.

### **Likely environmental impacts**

The production of traditional ciders and perries not fit for the table apple market, is adapted to extensive silvopastoral systems (high-stem trees with pasture and livestock) that require little fertiliser, relying on local traditional apple and pear varieties usually not fit for the table market that contribute to maintaining agricultural genetic diversity and

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<sup>56</sup> JRC technical report “Benefits and costs of EU marketing standards in the cider sector – Results from interviews with stakeholders” (2022).

<sup>57</sup> Euromonitor, Passport – Cider in Western Europe- June 2019.

<sup>58</sup> Written contribution from SNTC during public consultation. + JRC technical report “Benefits and costs of EU marketing standards in the cider sector – Results from interviews with stakeholders” (2022).

<sup>59</sup> <https://www.ifa.ie/wp-content/uploads/2020/08/2015-Apple-growers-pre-budget-final-submission-Final-July-20151.pdf>.

are often rustic and adapted to their environment<sup>60</sup>. While silvopastoral systems offer opportunities as carbon-sinks<sup>61</sup>, they contribute to the objectives of the European Climate Law<sup>62</sup>. Moreover, because they are processed, apples and pears used for the production of cider and perry do not need to be blemish-free. Their sorting is not needed, which can help reduce production losses – and improve resource use – as can the possibility to utilise fruits not suitable for the ‘fresh market’ (e.g. because of visual defects)<sup>63</sup>. Consequently, the cultivation of apple and pear orchards dedicated to the production of cider/perry requires less or no pesticide use. This, in turn, contributes to maintaining or restoring biodiversity and limiting pollution of the environment. A marketing standard, if sufficiently ambitious and trusted, could lead to a higher production of quality cider and perry<sup>64</sup>, thereby possibly increasing the valorisation of fruits which do not conform to the fresh product marketing standard (limitation of waste). Such impact would be less important in case of less demanding EU rules (Options I and II) or in the absence of EU rules (baseline). All options are in line with the ‘do no significant harm principle’.

### **Likely impacts on simplification or administrative burden**

Introducing an EU marketing standard for cider and perry is expected to lead to some regulatory costs at MS level, resulting from the necessity to modify existing national rules or to introduce new national rules in line with the EU rules, and to implement and control them. MSs that have national production and control rules already in place would need to adapt to the new delegated act; the costs they would incur would be less than for those MSs which would have to introduce rules and control them from scratch. In that sense, Option I would be the Option that is most compatible with the existence of national rules, while Option III could result in a higher burden (legislation, control) at the national level.

The functioning of the Single Market implies that MSs may have to control ciders and perries complying with different rules: those of their Member State (if they have national rules in place) and those of other MSs in the case of imported beverages. This checking against different rules would be avoided or lessened if a marketing standard were set up at EU level.

Given the combination of the two above-mentioned elements, impacts on simplification and administrative burden could turn out to be either negative or neutral.

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<sup>60</sup> Le pré-verger, pour une agriculture durable – F. Coulon, P. Pointereau, I. Meiffren (<https://www.yumpu.com/fr/document/read/26833491/les-vergers-traditionnels-et-les-alignements-darbres-tatards-portail-68>).

<sup>61</sup> Silvopastoral systems capture CO<sub>2</sub> through both developed trees and grass, in comparison to intensively grown orchards that have generally a lower vegetation cover (less or no grass between trees and reduced tree size).

<sup>62</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999.

<sup>63</sup> JRC technical report “Benefits and costs of EU marketing standards in the cider sector – Results from interviews with stakeholders” (2022).

<sup>64</sup> Contribution of ‘le syndicat des cidriers indépendants de France’ to the public consultation: experience of setting a strict cider legislation in Quebec.

## Who would likely be affected

MSs would have to change their national legislation if and when an EU marketing standard or ORTs deviate from their national current standards. Then again, the nature of controls applying to ciders and perries imported from other MSs would change and synergies could be achieved.

Those processors (within and outside the EU) who would need to upgrade their production process to meet the requirements of the new EU marketing standard would be affected negatively, although they would still be able to market their product under another sales designation. However, producers whose products would already comply with the new marketing standard would benefit as they stand to benefit from a more level playing field. Farmers would be positively affected, due to an increased demand for fruits used as raw material driven by the ORTs and by the minimum percentage of juice (option III).

Consumers would benefit from better at-first-glance information from the label and a more transparent and harmonised market. Prices for products in line with the new standard might increase. Given that lower quality alcoholic beverages made with apples or pears could still be marketed under other designations, consumers preferring those products would not be worse off.

### 10.1.4. Comparison of options

#### Effectiveness

Given the impacts highlighted in the above sections, it is expected that Option III would be the most effective for ensuring fair competition between producers, reinforcing the authenticity of cider and perry and improving information to consumers. This would benefit mostly producers of traditional/craft products and improve consumers' trust in those products. Options I and II would also bring improvements over the baseline but to a lower extent than Option III.

#### Efficiency

Although Option III could bring the highest benefits for certain producers and consumers, it would require national authorities to spend more resources on the legislative and control tasks that would result from an ambitious EU marketing standard. Options I and II on the other hand would have lesser effect on the existing national and private marketing rules, albeit to the detriment of the benefits for certain producers and consumers. Because of these trade-offs and the lack of quantitative data, it is not straightforward to determine which option would be the most efficient.

	Baseline	Option I	Option II	Option III
<b>Costs</b>				
Compliance costs incurred by food business operators intra and extra EU (direct)				
– Operators (higher quality segment – no need to upgrade production process)	0	0	0	0
– Operators (lower quality segment –				

need to upgrade production process or loss of use of name 'Cider/perry')	0	-	-	--
Regulatory costs incurred by regulators (direct)	0	-	-	--
<b>Benefits</b>				
Economic opportunities for food business operators intra and extra EU (direct)	0	+	+	++
Wider range of products – market segmentation (direct)	0	+	+	+
Improved consumer information (direct)	0	+	+	++

## Coherence

Establishing EU rules for the marketing of cider and perry is consistent with the CAP objectives in the Treaty, among others ensuring a fair standard of living for the agricultural community and stabilising markets. There are marketing standards in existence for other beverages (wine, spirit drinks) and they are generally deemed beneficial for consumers and producers alike.

The 2020 Commission staff working document for the evaluation<sup>65</sup> concluded positively on the general coherence of agricultural marketing standards with other EU policies. It did not address the specific case of cider and perry. However, via their link to food and also the way food is produced, EU rules for the marketing of cider and perry would strengthen the links to health policy, especially as regards FIC. Coherence with environmental policy and the objectives of the European Climate Law would also be reinforced if those marketing rules result in the application of more traditional production methods, such as in particular under Option III.

## Proportionality

None of the three proposed Options implies fully substituting EU rules for national rules or private guidelines (e.g. for fixing higher percentage of (fresh) juice or setting the list of permitted additives, defining further ORTs). A certain level of subsidiarity would remain whatever Option chosen. However, Option I is the most compatible with existing rules or guidelines. In that sense, the new EU rules for the marketing of cider and perry would remain proportionate.

### 10.1.5. Preferred option

The three possible options for the introduction of a cider/perry marketing standard can be justified by the improvements that a new standard would provide to the functioning of the EU cider/perry market – for both operators (especially SMEs on the medium and high

<sup>65</sup> [https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/key\\_policies/documents/swd2020-230-evaluation-marketing-standards\\_en.pdf](https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/key_policies/documents/swd2020-230-evaluation-marketing-standards_en.pdf).

quality segments) and consumers. Such benefits are expected to be higher if the EU rules are more detailed. Keeping the status quo and not introducing a standard means none of these impacts would materialise.

Most contributions to the stakeholder consultation which took place over the past months (inception report, public consultation, independent contributions) have pointed in the same direction, i.e. they support the establishment of an EU marketing standard for cider and perry.<sup>66</sup> However, they differed on the level of ambition of that standard, one such contribution favouring a minimal standard while the others requesting more ambitious rules<sup>67</sup>.

Given these opinions and the assessment of the economic, social and environmental impacts carried out in the above sections, the Commission's preferred option is to introduce an ambitious standard with detailed rules for the marketing of cider and perry, including a definition of 'cider' and 'perry', and to complement this by ORTs (Option III). The Commission considers that the other options would not sufficiently achieve the objectives as explained in Section 10.1.1.

#### *10.1.6. Monitoring and evaluation of impacts*

The Commission will make use of existing channels to monitor the implementation and collect information and data of the functioning of marketing standards in the market. This includes tabling a regular dedicated discussion on the standards in the Expert Group on the Common Organisation of the Market in agricultural products, which meets several times per year, with delegates from MS authorities, as well as in the Civil Dialogue Group with relevant stakeholders. The Commission will investigate in those discussions whether further data is available, beyond what MSs and stakeholders provided in the course of this impact assessment (e.g. typology of the different cider/perry products, their current market share and evolution over past years, their economic importance, national legislations in place). This information will be used, together with others, in a study that the Commission is planning to conduct in the medium-term on the functioning of the marketing standards and their contribution to the market functioning. While this study will not provide for monitoring of impacts as such, it will identify remaining data gaps and may identify new data sources.

## **10.2. Reduced-sugar fruit juices**

### *10.2.1. Problem definition*

In the EU, beverages with 100% fruit juice content (fresh or from concentrate) can be labelled 'fruit juices'. In 2018, the estimated EU 'apparent consumption'<sup>68</sup> of 'fruit juices' was 5.9 million litres. The 'apparent per capita consumption' of fruit juices and nectars together<sup>69</sup> was estimated at 17.6 litres per year in the EU28<sup>70</sup>. In terms of market

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<sup>66</sup> On top of the replies to the questionnaire, 8 over 11 elaborate written contributions indicated their preference for a marketing standard completed by ORTs.

<sup>67</sup> FNPFC asked for 70% apple juice, CIF and Maison cidricole de Normandie for 100%.

<sup>68</sup> The UN Statistics Division uses this term, see <https://unstats.un.org/unsd/environmentgl/gesform.asp?getitem=116>.

<sup>69</sup> Council Directive 2001/112/EC of 20 December 2001 relating to fruit juices and certain similar products intended for human consumption, OJ L 10/58 (hereinafter the 'Juice Directive') differentiates between several categories of fruit juice based beverages: fruit juice, fruit juice from concentrate, concentrated fruit juice, water extracted fruit juice, dehydrated/powdered fruit juice, fruit nectar. Fruit juice is: The fermentable but

size, Euromonitor data indicates that the market for ‘100% juice’ across all MSs is worth around EUR 11 billion (EUR 11.3 billion in 2021, EUR 10.5 billion in 2020, and EUR 12.2 billion in 2019).<sup>71</sup> In terms of EU trade with third countries, fruit juices represent EUR 1.6 billion of exports and EUR 1.7 billion of imports.<sup>72</sup>

Based on the above figure of 17.6 litres per year per capita, 100% fruit juices and nectars are a non-negligible proportion of EU citizens’ diets. As a matter of comparison, the average annual apparent consumption per capita of fresh apples in the EU27 in 2021 is estimated at 15 kg, and for fresh oranges 13 kg<sup>73</sup>. Yet, it takes 2-3 oranges to make 120ml of juice, the equivalent of a glass. Drinking one glass of juice is therefore considered to contain the energetic equivalent of two or three fresh oranges, a quantity rarely consumed in one seating because the feeling of satiety is reached before that<sup>74</sup>.

Linked to this question of the relative energetic intake when consuming a one glass of fruit juice versus one whole fruit, there are calls by the WHO, health experts and consumer associations to reduce the free sugar intake in diets, including free sugars content in processed food, such as the sugars contained in 100% fruit juices (hereinafter ‘fruit juices’) and from fruit juice concentrates<sup>75</sup>. This is reflected in the F2F objectives and in particular the action concerning reformulation of processed products. Marketing standards are not the best or only tool to influence the level of consumption of products.

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unfermented product obtained from the edible part of fruit which is sound and ripe, fresh or preserved by chilling or freezing of one or more kinds mixed together having the characteristic colour, flavour and taste typical of the juice of the fruit from which it comes. Flavour, pulp, and cells obtained by suitable physical means from the same species of fruit may be restored to the juice. Fruit juice from concentrate is: The product obtained by reconstituting concentrated fruit juice defined in point 2 with potable water. Concentrated fruit juice is: The product obtained from fruit juice of one or more fruit species by the physical removal of a specific proportion of the water content. Where the product is intended for direct consumption, the removal shall be at least 50 % of the water content. Water extracted fruit juice is: The product obtained by diffusion with water of pulpy whole fruit whose juice cannot be extracted by any physical means, or dehydrated whole fruit. Dehydrated/powdered fruit juice is: The product obtained from fruit juice of one or more fruit species by the physical removal of virtually all the water content. Fruit nectar is: The fermentable but unfermented product which is obtained by adding water with or without the addition of sugars and/or honey to the products defined in points 1 to 4 to fruit purée and/or to concentrated fruit purée and/or to a mixture of those products.

<sup>70</sup> AIJN Liquid Fruit Market Report of 2019: <https://www.aijn2019report.com/aijn2019report/homepage>. For their statistical data, AIJN has decided to aggregate fruit juice (100% juice content) and nectars (25-99% juice content). AIJN is the “Association de l’industrie des jus et nectars de fruits et de légumes de la CE” and it is the main association representing EU fruit juice producers.

<sup>71</sup> Extracted from Euromonitor Passport data, total value retail selling price in current prices.

<sup>72</sup> [https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/farming/documents/agrifood-extra-eu27\\_en.pdf](https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/farming/documents/agrifood-extra-eu27_en.pdf).

<sup>73</sup> EU Agricultural Outlook for Markets, Income and Environment 2021 – 2031 available

[https://ec.europa.eu/info/food-farming-fisheries/farming/facts-and-figures/markets/outlook/medium-term\\_en](https://ec.europa.eu/info/food-farming-fisheries/farming/facts-and-figures/markets/outlook/medium-term_en).

<sup>74</sup> Science-et-vie.com, « Boire le jus d’un fruit équivaut-il à le manger ? », *Science-et-vie.com*, 30 novembre 2014.

<sup>75</sup> See, e.g., Spain’s reply to the targeted consultation: ‘As regards fruit juices and fruit jams, we consider that it would also be appropriate to analyse the possibility of revising the marketing standards, specifically as regards the possibility of allowing the reduction of the sugar content, as the technological developments currently available in the food industry would allow this.’ See also, WHO recommendations of 2015: ‘A new WHO guideline recommends adults and children reduce their daily intake of free sugars to less than 10% of their total energy intake. A further reduction to below 5% or roughly 25 grams (6 teaspoons) per day would provide additional health benefits.’, WHO defines free sugars as monosaccharides (such as glucose, fructose) and disaccharides (such as sucrose or table sugar) added to foods and drinks by the manufacturer, cook or consumer, and sugars naturally present in honey, syrups, fruit juices and fruit juice concentrates <https://www.who.int/news/item/04-03-2015-who-calls-on-countries-to-reduce-sugars-intake-among-adults-and-children>. See also EFSA scientific opinion on the tolerable upper intake level for dietary sugars of 28 February 2022 <https://www.efsa.europa.eu/en/efsajournal/pub/7074>.

Nevertheless, some stakeholders conclude that the sugar content in fruit juices should be decreased via a revision of the relevant marketing standard, as defined in Council Directive 2001/112/EC of 20 December 2001 relating to fruit juices and certain similar products intended for human consumption (hereafter the ‘Juice Directive’)<sup>76</sup>.

The sugar of ‘fruit juices’ has to come from the naturally-occurring sugar present in the fruit used as a raw material and is considered as being “free sugars” as defined by WHO and the European Food Safety Authority (EFSA). No other sugar—nor sweeteners—can be added, according to the Juice Directive. Moreover, these naturally-occurring sugars cannot be removed from fruit juices without the product losing its designation as ‘fruit juice’, because the marketing standard defines the technologies and treatments that can be used for processing the juice and the minimum Brix level that fruit juice from concentrate must meet<sup>77</sup>. Brix means the sugar content of an aqueous solution.

There is growing consumer demand for fruit juices with reduced naturally-occurring sugar content<sup>78</sup> while the juice producing sector recognises that the “ongoing authenticity, organoleptic quality and natural characteristics of the juices” need to be preserved<sup>79</sup>. Such products are arriving on the EU market thanks to new processing techniques. One such technique is enzymatic fermentation that converts fructose, glucose and sucrose sugars into prebiotic fibres and other non-digestible fibres. The technology has been shown to reduce sugar content by up to 80% while preserving the vitamins and other nutrients in the fruit. The process moderates the sweetness of the juice while intensifying the fruit flavour. For the time being, the product will be marketed in the USA, with a 30% sugar reduction.<sup>80</sup> Another process already used to market a product in the EU is reverse osmosis to remove naturally occurring sugars in the fruit juice.<sup>81</sup> Reverse osmosis is most commonly known for its use in drinking water purification from seawater, removing the salt and other effluent materials from the water molecules. A third developing process is based on yeast fermentation and the product will soon come to market in the EU as well.<sup>82</sup> A chromatographic process with resins absorbing the sugar in the juice is also being developed, as well as a process using bacterial fermentation to convert the sugar in gluconic acid<sup>83</sup>. According to juice manufacturers, this list is not limitative and the sector is actively developing a number of other potential innovative

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<sup>76</sup> <http://data.europa.eu/eli/dir/2001/112/2014-10-05>. The Juice Directive can be amended via an ordinary legislative procedure based on Article 43 TFEU. Delegated Acts may be adopted based on Articles 7 and 7a of the Directive to amend all Annexes to the Directive, with the exception of Part I of Annex I, and of Annex II. See Annex 5 of this Impact Assessment.

<sup>77</sup> Directive 2001/112/EC, Annex V - Minimum Brix levels for reconstituted fruit juice and reconstituted fruit purée.

<sup>78</sup> ‘Thanks to growing awareness of the adverse effects of consumption of too much sugar, consumers are starting to become more concerned about hidden sugars in categories that were once considered to be healthy... they are showing greater interest in sugar reduction... interest in sugar reduction increased by 16% over the 12 months to October 2021 and has nearly doubled (96%) since 2016.’, <https://www.bevindustry.com/articles/94659-juice-manufacturers-address-consumer-concerns-with-fortification>.

<sup>79</sup> Contribution of PepsiCo to the public consultation.

<sup>80</sup> <https://www.foodnavigator-usa.com/Article/2022/01/10/Better-Juice-seals-first-commercial-deal-to-bring-sugar-reduced-fruit-juice-to-market-by-Spring-2022>.

<sup>81</sup> See the fruit-based drink labelled ‘Désucrés’ by the brand Cidou, marketed in France: <https://www.cidou.fr/cidou-lance-les-desucres/>.

<sup>82</sup> Conference call with Austria Juice, a B2B fruit juice operator based in Austria, of 4 May 2022.

<sup>83</sup> Conference call with Austria Juice of 4 May 2022.



processes to reduce sugar in fruit juices, some of which are still covered by trade secrecy and could not yet be shared with the Commission services<sup>84</sup>.

They are a novelty and, for the time being, ‘niche’ products. They cannot be labelled as ‘fruit juice’ according to the current marketing standard. The inability to use the sales designation ‘fruit juice’ has operators hesitate to develop this type of products at a greater scale, as there is a commercial risk to market the products under different designations. Given consumer-demand for reduced sugar content in processed food, the development of reduced-sugar fruit juices should not be hindered by EU rules.

Currently, these new juice-based beverages are marketed using another designation, yet sold next to fruit juices in retail outlets. This could lead MSs to potentially adopt diverging national approaches to these reduced-sugar ‘fruit juices’<sup>85</sup>, creating distortions to competition across the single market<sup>86</sup> and confusion for consumers. As not regulated, the quality of these beverages is also not harmonised by EU rules.

The Juice Directive is clear on this aspect. Article 6 states that ‘... only the treatments and substances listed in part II of Annex I and the raw materials complying with Annex II may be used to manufacture the products defined in part I of Annex I.’ Fruit juices can only be subject to a limited list of treatments and contain a limited list of additional ingredients (such as vitamins, minerals, food additives, restored flavour, pulp and cells). Moreover, the Juice Directive fixes minimum Brix levels that fruit juice from concentrate must meet.

The Juice Directive, in which the relevant marketing standard for juices is enshrined, is the result of carefully balanced compromises between the various national preferences and, as past and current discussions with MS and stakeholders have shown, politically very sensitive. Opening the Juice Directive to integrate a new designation for fruit juices with reduced (naturally-occurring) free sugars has therefore been prioritised for a more detailed assessment in this Section to identify and evaluate the impacts of the possible change to support a well-informed choice.

The existing EU regulations relating to consumer information and health claims allow labelling reduced-sugar products if the reduction is at least 30%. However, the Juice Directive limits such a possibility for juices for the reasons mentioned above. Hence, currently, the ‘fruit juice’ sales designation could not be used in the EU for reduced-sugar fruit juices.

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<sup>84</sup> Conference call with Austria Juice of 4 May 2022; email exchanges with AIJN in June 2022.

<sup>85</sup> During a conference call with the DGCCRF on 31 January 2022, it was explained that there are ongoing administrative actions in France regarding the use of the designation ‘fruit juice’ by Cidou’s Désucrés. During a conference call with Austria Juice on 4 May 2022, it was explained that the Austrian authorities were prepared to authorise the marketing of reduced-sugar fruit juices under the designation “beverage based on juice with reduced sugar”. As the products are not yet commercialised in other MSs, their respective position on this is not yet defined.

<sup>86</sup> A parallel could be drawn with ‘raw chocolate’ or ‘whole fruit chocolate’ where emerging products falling outside of Directive 2000/36/EC of the European Parliament and of the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption, OJ L 197/19 are regulated at Member State level and the manufacturers cannot use the designation ‘chocolate’: ‘Ritter Sport’s new chocolate bar made from 100% cocoa falls foul of German food regulators. [...] The country’s regulators ruled that a new chocolate bar can’t be labelled chocolate because it contains no sugar.’ <https://www.confectionerynews.com/Article/2021/02/04/Ritter-Sport-s-new-chocolate-bar-made-from-100-cocoa-falls-foul-of-German-food-regulators>. The Chocolate Directive has not been considered for a revision at this stage.

As such products will become increasingly available on the EU market, there could be a need to set an EU legal framework to maintain the standard of fruit juices and ensuring effective and fair competition, as well as ensuring the quality and integrity of these reduced-sugar juices, because even with the best consumer information on the labels, not all technically possible treatments to reduce sugar content can per se be considered acceptable as not denaturing the fruit juice. For the purpose of consumer protection, products that have undergone special treatments to reduce the natural free sugars content need to be clearly labelled to inform consumers about the new processes involved to reduce sugar content, as well as about the different composition of the juice as compared to the original juice, e.g. content of novel carbohydrates or other substances created from enzymatic processes. Currently, sugar-reduced fruit juices are not falling under the Juice Directive. However, they are clearly labelled as regards to the characteristics of the food, their method of manufacture or production and whether a component naturally present has been substituted with a different component, in order not to mislead consumers.

It is important to note that the sector is developing processes that can remove a large proportion of the naturally-occurring sugar in juices. The sector is in favour of a flexibility to be able to market sugar-reduced juices as ‘fruit juice’, even if the sugar reduction does not reach the 30% threshold required by the regulation on health claims (so-called ‘silent sugar reduction’). Like for soft drinks, the sector is of the opinion that there is consumer demand for a range of juices with varying levels of reduced sugar<sup>87</sup>.

This Section explores the possibility to modernise the fruit juice marketing standard and to enable the use of the designation ‘fruit juice’ for juices with reduced (naturally-occurring) sugar under the Juice Directive, keeping in mind that consumers need to be informed about the new identity, property and composition of the product.

Because of the novelty of such reduced-sugar products and the fact that policy choices will need to be made, it is considered necessary to provide in this Section details on various options for including these products into the Juice Directive and to identify ex-ante to the extent possible their respective potential economic, social and environmental impacts.

In parallel, in keeping with the public health objective to reduce (free) sugar content in processed products, it is explored in Annex IX whether the labelling of fruit juices and fruit nectars should be adapted, as nectars are the only fruit-based drinks in the Juice Directive that can contain added sugar on top of naturally-occurring sugar. This change is however limited to optional nutrition claim labelling, without affecting the product composition. It is considered of a technical nature and thus was not selected to be examined in the same level of details.

### *10.2.2. Options to achieve the objectives*

#### **Baseline**

The baseline is to take no action at EU level. The reduced-sugar products continue to develop outside the framework of the Juice Directive. In accordance with Regulation (EU) No 1169/2011 on the provision of food information to consumers, consumers are nevertheless appropriately informed about the product’s characteristics. In addition, any treatments or additional ingredients falling within the scope of the definition of “novel

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<sup>87</sup> Conference call with Austria Juice of 4 May 2022.

food” would have to comply with the authorisation procedure laid down in Regulation (EU) No 2015/2283 on novel foods<sup>88</sup>.

## Policy options

In view of the above, the options to address this issue are:

***Option I:*** to authorise in Annex I, part II of the Juice Directive certain treatments in fruit juice to reduce naturally-occurring sugar and, because in fruit juice from concentrate the sugar level will be reduced below the mandatory levels in the Juice Directive, add a derogation to the minimum Brix levels for fruit juices from concentrate (provided that water addition does not overpass the water extracted for concentration). These juices will be allowed to use the sales designations such as ‘fruit juice’, ‘fruit juice from concentrate’. With no sugar reduction target and no additional qualitative requirements, the quality appreciation being left to consumers. The option would not require a minimum of 30% reduction. The reduction would appear in the mandatory nutrition declaration required by FIC but not as a prominent ‘reduced-sugar’ claim. Regulation (EU) No 1169/2011 on the provision of food information to consumers continues to apply so that consumers are appropriately informed about the product’s characteristics (process involved for reducing sugars as well as other compositional changes, if any, that occur other than the sugar level).

***Option II:*** to authorise in Annex I, part II of the Juice Directive certain treatments or additional ingredients to reduce naturally-occurring sugar<sup>89</sup>, while preserving a minimum qualitative aspects of the final products (e.g. nutrients, taste, mouthfeel), for the use of the designation fruit juice (fruit juice from concentrated, etc.). This option would also entail adding a derogation to the minimum Brix levels that fruit juices from concentrate must meet when the concentrated fruit juice is reduced in sugar through one or the other of the newly authorised treatments (provided that water addition does not overpass the water extracted for concentration). The option would not require a minimum of 30% reduction. In case lower than 30%, the sugar reduction would appear in the mandatory nutrition declaration required by FIC but the ‘reduced-sugar’ claim would not be allowed. Only if higher than 30%, this claim would be possible. Regulation (EU) No 1169/2011 on the provision of food information to consumers continues to apply so that consumers are appropriately informed about the product’s characteristics (process involved for reducing sugars as well as other compositional changes, if any, that occur other than the sugar level).

***Option III:*** as Option II, but the reduction of sugar should be at least 30% compared to a similar product, in accordance with the regulation on health claims. The designation of the fruit juice that has been sugar-reduced should be clearly indicated: fruit juice, sugar reduced. Regulation (EU) No 1169/2011 on the provision of food information to consumers continues to apply so that consumers are appropriately informed about the

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<sup>88</sup> Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001, OJ L 327, 11.12.2015, p. 1–22, <http://data.europa.eu/eli/reg/2015/2283/oj>. For example, when approving processes, it will need to be ensured that no disadvantages for consumers occur, e.g. by enzymatically converting sugar into longer molecular carbohydrates that are normally not present or present at different levels in regular fruit juice that has not undergone the sugar-reducing process.

<sup>89</sup> Other nutrients, such as minerals, vitamins and fibres would remain at the same level.

product's characteristics (process involved for reducing sugars as well as other compositional changes, if any, that occur other than the sugar level).

***Discarded option:*** lowering across the board the minimum Brix levels that reconstituted fruit juice and reconstituted fruit purée must meet, without introducing the possibility for the sector to use the above-described sugar-reducing processes. No MS or stakeholder either touched on this or asked for this. The levels in the Juice Directive are either consistent with international standards set in the Codex or already lower slightly lower for some products (e.g. apples 11.2 instead of 11.5, raspberries 7 instead of 8). Lowering these levels alone would not address the problem, because the processes to reduce sugar in fruit juice would still not be authorised in the marketing standard for the produce to keep the designation 'fruit juice' or 'fruit juice from concentrate'. The Brix levels as defined in the Juice Directive are the result of a compromise between the different stakeholders and represent to the closest extent possible the actual sugar level of the juice extracted from the fresh fruit. Lowering these levels alone would lead the sector to have to further dilute all their juices from concentrate. Already when a juice is reconstituted with water from concentrate, the customers partly pay for added water. If Brix levels are lowered across the board linking it to the use of a regulated sugar-reducing process, a greater proportion of the price paid by the customer of fruit juice from concentrate would go to simple water and this would lead to consumer confusion as to what the product actually is. In addition, further dilution would also reduce the proportion of all the other nutrients (minerals, vitamins, fibres). Therefore, this option is discarded.

### *10.2.3. Impacts of the different policy options*

#### **Likely economic impacts**

***Options I, II and III:*** For the time being, reduced-sugar fruit juice is a novelty 'niche' product. Some reduced-sugar products are already marketed in France<sup>90</sup> or will soon be in the rest of the EU<sup>91</sup> – and perhaps other MSs without having been signalled to the Commission. There is therefore no market share data, let alone any trade data on this specific product, nor any comparison with trade on regular fruit juice. They cannot be labelled as 'fruit juice', for the reasons explained above. Adapting the Juice Directive for this product, almost pre-emptively given the limited trade, would provide the sector as a whole, whether for future imports from outside the EU or future marketing intra-EU, with a positive impact in terms of assurance of return on investment, hence a positive economic impact for the manufacturers. All three of the proposed Options are actually giving a new right to potential importers (using the denomination "fruit juice" on their products). None of the Options imply any discrimination between domestic/imported products and their scope is not more trade restrictive than necessary to fulfil the objective, namely to encourage reformulation of produce to reduce sugar content and to inform consumers about it. There is no other less trade restrictive option contributing to the same extent to the policy objectives in question.

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<sup>90</sup> See, e.g., fruit-based drinks labelled 'Désucrés' by the brand Cidou, marketed in France only, not in Belgium or Luxembourg: <https://www.cidou.fr/cidou-lance-les-desucres/>. For the moment, as this product is an emerging product, it is the Commission's understanding that there is no existing cross-border trade. The AIJN also explained that it did not know about this new segment until the Commission started its consultation of the sector in February 2021.

<sup>91</sup> Conference call with Austria Juice of 4 May 2022.

Processing the fruit juice to reduce its sugar content has an additional cost for the manufacturer<sup>92</sup>. By ensuring these products can use the recognised designations “fruit juice”, “fruit juice from concentrate”, “concentrated fruit juice” etc. from the Juice Directive, because they are indeed a beverage made of almost exclusively fruit juice<sup>93</sup>, manufacturers could develop this product to wider scale, enabling them to potentially market it more widely in the single market and have economies of scale, i.e. greater availability for the consumers and if the market economics permit, greater affordability.

In addition, these products would be labelled ‘fruit juice’ (more limited under Option III, because only those with at least 30% sugar-reduction would be labelled fruit juices, and option II, because minimum qualitative aspects of the final products would need to be met, than under the other Option I, where the sugar-reduction techniques are authorised without additional qualitative requirement) and be marketed as such, no longer being treated as a soft drink in some MSs. This would provide economic benefits and a premium price as consumer would be disposed to pay a higher price. While Option I leaves more margin to the industry to produce also reduced-sugar juice regardless of the final quality aspects of the products, Options II and III provide more opportunities in terms of market segmentation, allowing for a better appreciation of the quality of the final product.

Either of the three Options would apply without discrimination both to imported juices and juices produced in the EU. Importer could continue to import ‘conventional’ fruit juice or benefit from the recognition of the sugar-reducing techniques to import their products under the Juice Directive designations and market them in the single market as such. Already, sugar-reduced “fruit juices” can be imported, and like EU-produced sugar-reduced fruit juices, they cannot use the Juice Directive designations and have to comply with the European rules on food information to consumers.

### **Likely impact on SMEs and competitiveness**

***Options I, II and III:*** The processes to reduce naturally-occurring sugar in fruit juice are being developed by a variety of actors, both SMEs<sup>94</sup> and larger players<sup>95</sup>. Setting an EU-wide regulatory framework by adopting a uniform, regulated approach across the single market would put them on an equal footing to compete, giving them the necessary legal certainty to further their project and develop their commercial strategies. The possible use of the fruit juice sales designation would constitute an advantage for the marketing of such products.

One of such processes developed to date is based on reverse osmosis, a process that has developed greatly in recent decades and that has progressed from an emerging technology to become a consolidated, efficient and competitive process<sup>96</sup>. Other

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<sup>92</sup> Several different processes are being explored by the industry to address the consumers’ demand for reduced-sugar fruit juice, each having a different range of costs, either in the initial investment in new production techniques, or in the actual process of production itself, or both.

<sup>93</sup> And the other already authorised ingredients as per the Juice Directive.

<sup>94</sup> The brand Cidou benefits from the French ‘PME+’ label, indicating that it is a SME. Better Juice Ltd. received a grant from the European Union Horizon 2020 fund, in part due to its SME status (<https://cordis.europa.eu/project/id/867406>).

<sup>95</sup> Austria Juice is one of the leading manufacturers of beverage ingredients and flavour solutions, over a dozen production plants situated in Europe. <https://www.just-drinks.com/contractors/manufacturing/austria-juice/>.

<sup>96</sup> <https://condorchem.com/en/blog/reverse-osmosis-applications/>.

emerging processes to produce reduced-sugar fruit juices have just been or are about to be developed and will soon start being commercialised<sup>97</sup>. Regulating to recognise that these processes produce authentic reduced-sugar fruit juices would give the necessary legal certainty and foster the development of these processes.

Once there is legal certainty as to the approach applicable to reduced-sugar fruit juices produced with this process, many existing operators could decide to make the necessary investments to expand their product range<sup>98</sup>.

**Option III** would be more limiting in terms of competitiveness, because the process used to reduce the sugar content would necessarily have to reach 30%, putting an added layer of requirement and difficulty for new entrants.

Option I would provide more competitive advantages to big companies allowing for a larger expansion of economies of scales. Option II would be more favourable to SMEs, which are usually more focused on the final quality of the product and closer to the source of the raw material.

Manufacturers of fruit juices that do not reduce the sugar content would have the choice to develop their own line of sugar-reduced juices, if they wish, or continue to compete in the juice segment based on other characteristics of their product, as is already the case (price, attractive fruit blends, quality marking such as organic origin, etc.).

### **Likely social impacts**

**Options I, II and III:** Empowering consumers to make informed, healthy and sustainable food choices is one of the objectives of the F2F<sup>99</sup>. Ensuring that the consumers get products with reduced-sugar content (reduced-sugar fruit juice with an overall better nutritional profile) would contribute to that objective, so would ensuring that the product names do not create confusion for the consumers and lead them to choosing a product that is not in accordance with their expectations. Consumers should indeed not be confused about the true characteristics and composition of product sugar-reduced fruit juice. To avoid consumers from being confused or misled, it is important that consumers receive comprehensive and clear information about the juice having been processed to reduce its natural sugar content, as well as any other compositional changes, if any. By calling such novel products “fruit juice”, consumers need to be comprehensively informed about the different characteristics of this product as compared to other “fruit juice” products on the market<sup>100</sup>.

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<sup>97</sup> E.g. BetterJuice product will be commercialised in the USA, while Austria Juice’s product will start being commercialised in the EU.

<sup>98</sup> The reverse osmosis is already widely used in the food industry “from concentrates of egg whites, fruit juices and gelatins, to removal of bacteria and brine in meat or alcohol removal from spirits. Dairy, starch and sugar industries are also users of the RO plant working process.” See <https://condorchem.com/en/blog/reverse-osmosis-applications/>.

<sup>99</sup> See section 2.4 of F2F.

<sup>100</sup> In line with the letter and the spirit of EU food law, Regulation (EU) No 1169/2011 on the provision of food information to consumers, Article 7 Fair information practices: 1. Food information shall not be misleading, particularly: (a) as to the characteristics of the food and, in particular, as to its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production; (b) by attributing to the food effects or properties which it does not possess; (c) by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics, in particular by specifically emphasising the presence or absence of certain ingredients and/or nutrients; (d) by

For the moment, such products are entirely new on the EU market (Cidou's 'désucrés' was launched in 2020) and consumers have little access to them. Removing barriers to trade inside the single market by providing a single EU-level framework would encourage the development of the product and make it more widely accessible to consumers in the EU.

It is also necessary to regulate what can be accepted as an authorised process to reduce sugar and how it should be communicated to consumers through labelling, to ensure consumers have all the necessary elements to make an informed decision and that they get a quality product – not a fruit juice diluted with water so as to reduce the sugar level. Both national authorities and private laboratories confirmed that properly produced reduced-sugar fruit juice are only adulterated as to their sugar content, other nutrients, such as vitamins, fibres and minerals, remaining preserved at the original level<sup>101</sup>, and that the state of science and technology to date allows to verify this so as to authenticate the product<sup>102</sup>.

Regulation would provide a standard for the industry against which to develop, manufacture and commercialise the product, as well as for MSs to set up the appropriate controls. This is by definition the role of marketing standards, as explained above in this impact assessment: 'guarantee [...] the quality of agricultural products [and] make it possible to reliably communicate product characteristics or attributes for purposes of the trade of the products concerned in the supply chain including in relation to the final consumer.'

While the development of a reduced-sugar processed product fits entirely with the health objectives of the F2F, a marketing standard only makes the product more marketable and aims to ensure consumers are properly informed and neither misled nor confused about the products. We cannot prejudge whether and to what extent consumers would shift their current consumption of fruit juices to these reduced-sugar products. Making them more widely available gives the consumers the choice, and the availability of healthier options than regular fruit juices or other beverages with higher sugar content constitutes a step towards a healthier diet, provided that the processes do not alter negatively the composition of the original juice that undergoes sugar reduction.

**Option I** would not ensure that the use of the technology to reduce sugar would respect minimum quality aspects to consumers. In Option II and III, on the contrary, the consumer protection aspect is more prominent.

Under Options I and II, the reduction would be 'silent', in the sense that it would appear in the mandatory nutrition declaration required by FIC but not as a prominent 'reduced-

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suggesting, by means of the appearance, the description or pictorial representations, the presence of a particular food or an ingredient, while in reality a component naturally present or an ingredient normally used in that food has been substituted with a different component or a different ingredient. 2. Food information shall be accurate, clear and easy to understand for the consumer.

<sup>101</sup> As described in section on the problem definition, depending on the process used, either the sugar is filtrated out, or it is transformed in fibres or gluconic acid. None of the processes developed to date purport to modify the level of other nutrients in the juice, or vitamins or minerals. In case there are compositional variations introduced, such modifications need to be clearly communicated to the consumer.

<sup>102</sup> Conference call with the DGCCRF of 31 January 2022. Confirmed by conference call with Laboratory Eurofins on 6 April 2022. Austria Juice takes the view that some of the processes explored by the industry deliver less authenticity. Any of the processes that would be added to the Directive would therefore have to be carefully evaluated with the sector, MSs, the JRC, etc. to ensure their effects on the juices.

sugar' claim, unless the reduction reaches at least 30% of sugar normally contained. The sector believes that there is a market demand for products that cannot reach this threshold as they are appreciated anyway by the consumer.

Under *Option III*, which would mandate a sugar reduction of at least 30% and not any value below that, the emphasis on the health aspect is even more prominent, but the risk is that less product would be sold on the market with such a low level of sugar as compared to Option II. However, with a required mandatory indication of the product being sugar reduced, consumers would be more prominently alerted about the sugar-reduced characteristic of the product.

### **Likely environmental impacts**

We do not anticipate any direct environmental effects for this revision. Since the products are already or will be commercialised independently from a regulation at EU level, the overall environmental impact of the production and consumption of these products on climate change, air quality, water quality and quantity, biodiversity, soil quality or resources, land use change or degradation, waste production and recycling, etc. will remain at the same level whether the EU acts or not. None of the processes used to reduce naturally-occurring sugars are understood to necessitate the use of products impacting significantly the environment. While the regulation is expected to scale up the reduced-sugar fruit juices, it is expected to remain a small segment that will also displace some current sales of regular fruit juices.

### **Likely impacts on simplification or administrative burden**

*Options I, II and III*: Allowing reduced-sugar juices to use the sales designation fruit juice would entail an additional level of control by public authorities. It could be argued that this could add to the administrative burden. However, for example in France, where this type of product is already marketed, authorities have already tested the juice with their established methods for inspection and controls for authenticity. Private laboratories that provide quality control testing on juices also confirm that the conventional isotope methods can be used to verify the processes used to reduce the sugar and that only the sugar was reduced<sup>103</sup>. In the case of Cidou's 'Désucrés', the FR authorities have been able to verify the technology used and the authenticity of the product<sup>104</sup>. The FR inspection services would see an administrative benefit of a regulation at EU level of this new product, to have a clear, uniform standard against which to control the quality of these juices and authorise marketing claims of reduced-sugar fruit juices<sup>105</sup>. The three Options are roughly equivalent in term of administrative burden.

### **Who would likely be affected**

Economic operators (e.g. juice producers, manufacturers, bottlers, retailers) would have a clear legal framework within which to develop their products. Consumers would have the assurance of the integrity and quality of the product they are purchasing and consuming, and as these products develop and clear labelling requirements about the true characteristics of the product, about the process used and changes introduced to the fruit juice will ensure that consumers are not misled about the true nature of the product. In

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<sup>103</sup> Conference call with Laboratory Eurofins on 6 April 2022.

<sup>104</sup> Conference call with the DGCCRF of 31 January 2022.

<sup>105</sup> Conference call with the DGCCRF of 31 January 2022.



the medium-term they would have the choice to shift their consumption habits to reduced-sugar fruit juices. Setting a standard would give public authorities a legal basis for treatment of these products as well as for controls.

#### *10.2.4. Comparison of options*

##### **Effectiveness**

All three Options give legal certainty to operators developing products that ultimately aim at reducing the intake of sugar. All three Options will comply with the FIC rules on labelling requirements in order to ensure that consumers are not misled about the true nature of the product.

##### **Coherence**

In terms of coherence with the current FIC Regulation and its ongoing revision, all three Options would neither overlap with it nor would they be incoherent with it. First, the FIC Regulation covers all products sold for consumer consumption and does not provide for specific rules regarding fruit juices, which are therefore contained in the Juice Directive. All three Options cover the composition and labelling of a specific fruit-juice-based product, which would only be regulated the Juice Directive. Second, none of the Options propose to derogate from the FIC Regulation or its revision regarding front-of-pack labelling or nutrient profile. All the Options actually complement the FIC Regulation whereas the latter does not provide for specific indications how to label reduced-sugar fruit juice.

##### **Efficiency**

By acting at the EU level, operators get the assurance of an equal treatment across the single market. Similarly, all consumers across the EU would have access to the same, comprehensive information on the labels for similar products, including about the process applied and changes of the product composition and a minimum quality ensured, as opposed to leaving it to MSs to regulate on the labelling or the industry to come up with their own labelling proposal. As detailed above, none of the options have anticipated impacts on the environment. Conversely, they can be expected to have a positive economic impact and a positive impact on SMEs and competitiveness, as well as a positive impact on social sustainability. The processes currently used to remove naturally occurring sugars are novel in the fruit-based beverage sector, the regulation would need to ensure that the processes used are safe, consumers are comprehensively informed and ensure the quality of the final product.

**Option I** would be mainly focused on the allowed technology, with no prescription of qualitative aspects, which would be left to the consumers to appreciate.

**Options II and III** would instead ensure that the final products respect minimum qualitative aspects.

**Option III** sets the bar at a higher level in terms of sugar reduction than Option II. As such, while providing products where at least 30% of the sugar has been removed, it would offer less economic opportunities to operators and may result in less products available to consumers on the market. Under Option II, a wide range of products with different levels of reduced sugar content would be available to the consumers on the market, whereas under Option III, consumers would only have access to conventional juices or reduced-sugar juice of at least 30% reduction. However, without a clear

threshold, this variety of available products might conversely turn into higher consumer confusion. A threshold of at least 30% does provide clarity to the consumers, who are already accustomed to this level for all other products using a sugar-reduction nutritional claim, in line with the current nutritional claim regulation.

	Baseline	Option I	Option II	Option III
Costs				
Compliance costs incurred by food business operators (direct)	0	-	-	-
Regulatory costs incurred by regulators (direct)	0	-	-	-
Benefits				
Economic opportunities for food business operators (direct)	0	+	+	+
Wider range of products/services (direct)	0	+	+	+
Improved information (direct)	0	+	++	+++
Improved welfare, health (indirect)	0	+	+	+

#### 10.2.5. Preferred option

The preferred option is Option III—lay down at the EU level the authorisation of certain treatments or additional ingredients in fruit juice to reduce naturally-occurring sugar while permitting the use of the sales designation fruit juice, fruit juice from concentrate, etc. and ensuring a minimum quality of the final product as well as at least 30% sugar reduction. In order to correctly inform consumers, the products would still need to comply with the FIC rules, requiring that consumers be informed that a process has been applied to reduce sugars as well as other compositional changes other than the sugar level, if any.

The approach creates a clear legal framework and allows for commercial plannability for both larger players and SMEs which are developing this new product and enables the basis for a return on investment concerning their research and development. Science is advanced enough to allow for the verification of the authenticity of the sugar-reduced fruit juices and it does not add a significant burden on national control authorities. Therefore, if a treatment is authorised in the Juice Directive, it should mean that it meets the standard for the product to use one of the designations in the Juice Directive. There is a demand for processed products reformulation, especially products with lower free sugars content, both from consumers and health authorities. The approach addresses this demand. However, given that food business operators and consumers are already accustomed to the threshold of 30% reduction for all products as regards nutritional claims on sugar content, it appears more coherent to use the same 30% threshold for reduced-sugar fruit juices (i.e. Option III), rather than allowing any possible level of reduced sugar content, even below 30% (Option II).

### 10.2.6. Monitoring and evaluation of impacts

The evolution of this product in terms of sales and market shares in the EU will be monitored over the medium-term using market reports and Euromonitor data, to assess the uptake and consumer interest of reduced-sugar fruit juices. Similarly to the approach for cider and perry, the Commission will also make use of existing channels to monitor the implementation and collect information and data on how the marketing standards are implemented in the market by operators, how they are perceived by consumers, how they are controlled by authorities, what their general added value is. This includes tabling a regular dedicated discussion on the standards in the Expert Group on the Common Organisation of the Market with delegates from MSs' authorities and in the Civil Dialogue Group with relevant stakeholders. The information will be used, together with others, in a study that the Commission foresees to conduct within five years of the application of the revision on the functioning of the marketing standards and their contribution to the market functioning, including for the modifications that are covered in this impact assessment. This study should not come too close after the regulatory changes come into force, so as to leave enough time for business operators to adapt and for consumers to lastingly change their purchasing behaviours.

<b>Objectives</b>	<b>Measures of success and monitoring indicators</b>
1. Processed products should be reformulated to have lower added sugar.	<i>Reduced-sugar fruit juices are produced, where naturally-occurring sugars are removed</i>
	- Composition of fruit juices and reduced-sugar fruit juices marketed in the EU (market research)
2. Consumers should have access to processed products containing lower levels of added sugar.	<i>Choices of jams and jellies offered to consumers contain lower levels of added sugar</i>
	- Consumer perceptions (consumer research) - Statistics on consumer purchasing behaviour changes (market research, including sales of reduced-sugar fruit juices vs other beverages) - Statistics on household consumption of products containing fruit and vegetables (including Eurostat's survey on consumption of F&V, as well as national nutritional surveys)
3. Consumers should have clear and transparent information on food products.	<i>Labelling of reduced-sugar fruit juices is clear and transparent to consumers</i>
	- Consumer perceptions (consumer research) - Consistency of Member States implementation and enforcement (Member States reports in the Expert Group on the Common Organisation of the Market in agricultural products with delegates from MS authorities)

## 10.3. Sugar levels in jams

### 10.3.1. Problem definition

Euromonitor data indicates that the market for 'Jams and Preserves' across all MSs is growing, standing currently at EUR 2.6 billion (EUR 2.4 billion in 2019, EUR 2.5 billion in 2020).<sup>106</sup> As mentioned in the context of fruit juices, there are calls to reduce the free sugars intake in diets. Free sugars include sugars naturally occurring in fruit juices and

<sup>106</sup> Extracted from Euromonitor Passport data, total value retail selling price in current prices.

fruit juice concentrates, including free sugars consumed via processed products<sup>107</sup>. Jams and jellies contain a significant amount of sugars from both the raw material and added sugar. Sugars in jams and jellies from the (complete) fruit do not count as free sugars, free sugars comprise added sugars (mostly sucrose) as well as sugars naturally occurring in fruit juice and concentrated fruit juice used in the production of jams and jellies. The nutrient of concern is free sugars, therefore, from a health perspective, the sugar provided by added sugars as well as by fruit juice or fruit juice as an ingredient needs to be reduced.

Jams, jellies and marmalades are regulated at EU level by Council Directive 2001/113/EC of 20 December 2001 relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption (hereinafter the ‘Jam Directive’)<sup>108</sup>. The Jam Directive sets a minimum amount for sugar (naturally occurring sugar and added sugar) in all products covered by the Jam Directive (jam, jelly, extra jam, extra jelly, marmalade, chestnut puree):

*‘Products defined in part I must have a soluble dry matter content of 60% or more as determined by refractometer, except for those products in respect of which sugars have been wholly or partially replaced by sweeteners.*

*Without prejudice to Article 5(1) of Directive 2000/13/EC, Member States may, however, in order to take account of certain particular cases, authorise the reserved names for products defined in part I which have a soluble dry matter content of less than 60%.’<sup>109</sup>*

This is in line with the international standard, the Codex Alimentarius on jams, which sets a range of 60 to 65%<sup>110</sup>.

In parallel, for jam the Jam Directive requires a minimum level of fruit content, with the quantity of fruit pulp or puree not less than 350g per kilo of the finished product. The use of the term ‘extra jam’ is reserved for products containing a higher level of fruit – 450g per kilo. In most MSs, extra jam sales have already largely superseded jam sales<sup>111</sup>. In France<sup>112</sup>, extra jams already represented 72% of the volumes produced in 2017 – 94 000 tonnes of extra jams were produced in 2017, versus 37 000 tonnes of standard jam. Two years before, the standard jam segment was at 36 000 tonnes, while the extra jam segment was at 90 000 tonnes. There had been a clear increase in the extra category since 2015 compared to the standard jam category.<sup>113</sup> According to the sector, these numbers

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<sup>107</sup> See EFSA scientific opinion on the tolerable upper intake level for dietary sugars of 28 February 2022 <https://www.efsa.europa.eu/en/efsajournal/pub/7074>.

<sup>108</sup> Council Directive 2001/113/EC of 20 December 2001 relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption, OJ L 10/67.

<sup>109</sup> Annex I, part II of the Directive. The 60% threshold excludes starch as starch is not a soluble dry matter.

<sup>110</sup> See section 3.2 of Codex Alimentarius Standard for Jams, Jellies and Marmalades CXS 296-2009, as amended in 2020 <https://www.fao.org/fao-who-codexalimentarius/codex-texts/list-standards/en/>.

<sup>111</sup> Conference call with Profel of 27 January 2022. Profel explains that the standard jam segment is “marginal” in Belgium and the Netherlands. No precise figures for these MSs nor the rest of the EU were provided.

<sup>112</sup> J. Lendrevie, Mercator 2007, ‘Le cas Bonne Maman’. According to recent market analyses, France (with 578,000 tonnes) remains the largest jam, jelly, puree and paste consuming country in the EU, comprising approx. 35% of total volume, exceeding the figures recorded by the second-largest consumer, Germany (258,000 tonnes), twofold. <https://www.globaltrademag.com/france-consumes-most-of-jam-jelly-puree-and-paste-in-the-eu/> of 18 February 2021.

<sup>113</sup> Study by Agrex Consulting for FranceAgriMer of December 2019 ‘Competitivite des produits de seconde transformation de l’industrie agroalimentaire française’.

are even higher in 2021, the segment of jams no longer being relevant in Belgium and the Netherlands, for example, while it historically persists in Scandinavian MSs because the offer has not yet adapted to expand the extra jam segment and lower the price difference between jams and extra jams like it happened in France, Belgium and Germany<sup>114</sup>.

Marketing standards may not be the best or only tool to influence the level of consumption of free sugars-containing products. Nevertheless, some MSs<sup>115</sup> and stakeholders<sup>116</sup> conclude that a “decrease of the sugar content” of jams and jellies should be helped along via a revision of the relevant marketing standard, as defined in the Jam Directive<sup>117</sup>. There is a call to act at the EU level<sup>118</sup>. This bid is also in line with F2F objectives and in particular the action concerning the reformulation of processed products.

Jams and jellies are by definition products containing mostly fruit, which contain naturally occurring sugars, and added sugar. Without the addition of a minimum level of sugar, the cooked fruit does not have enough inherent sugar to attain a jellified texture together with the added and naturally occurring pectin. Jellification is an essential process required to reach the desired mouthfeel known by consumers and the necessary preservability by reducing dramatically the availability of water for the development of bacteria, yeast or mould. Jam is therefore preservable for a long period even once the container is opened which is also a product quality that consumers seek<sup>119</sup>.

The Jam Directive also foresees that, without having to fulfil any specific conditions, MSs can adopt national regulations derogating from this minimum in the direction of

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<sup>114</sup> Conference call with Profel of 27 January 2022.

<sup>115</sup> Replies of Germany, Denmark, Estonia, Spain, Finland, Croatia, and Poland to the consultation of MSs.

<sup>116</sup> See WHO recommendations of 2015: ‘A new WHO guideline recommends adults and children reduce their daily intake of free sugars to less than 10% of their total energy intake. A further reduction to below 5% or roughly 25 grams (6 teaspoons) per day would provide additional health benefits.’ <https://www.who.int/news/item/04-03-2015-who-calls-on-countries-to-reduce-sugars-intake-among-adults-and-children>. See also EFSA draft scientific opinion on the tolerable upper intake level for dietary sugars of 22 July 2021 <https://www.efsa.europa.eu/en/news/safety-dietary-sugars-draft-opinion-open-public-consultation>.

<sup>117</sup> The Jam Directive can be amended via an ordinary legislative procedure based on Article 43 TFEU. Delegated Acts may be adopted based on Article 5 of the Directive itself for Annex II and Part B of Annex III. See Annex 5 of this Impact Assessment.

<sup>118</sup> See comments from France to the targeted consultation: ‘la modification de la réglementation devrait donc s’accompagner d’un point d’attention particulier sur l’information du consommateur afin d’éviter qu’il ne soit induit en erreur ou que ne soient placés en concurrence sous la même appellation et sans précisions complémentaires sur l’étiquetage des produits respectant les critères de fabrication "traditionnels" de la confiture, et d’autres pouvant y déroger, notamment pour en réduire les coûts ou la qualité.’ See comments from Estonia to the targeted consultation: ‘a new agreement on the minimum sugar content should be considered. The potential related effects on food safety are necessary to take into account when considering the changes, such as the use of preservatives for reduced sugar jams, which in turn may lead to a higher consumption of preservatives. Under the current requirements it is possible to make jams with a lower sugar content only if sugar is replaced by a sweetener. When considering the consumers’ expectations, consideration should be given to allowing jams with lower content of sugar (to be named as jams) but without the use of sweeteners. Consideration should also be given to whether the proportion of fruit should be increased if sugar is reduced. Traditions and consumer expectations must also be taken into account when finding solutions (e.g. jam must have a very sweet taste).’

<sup>119</sup> See e.g. France DGCCRF’s page on jams: ‘Jam is synonymous with pleasure, flavours and scents of yesteryear. It is the art of preserving by sugar, fruits, vegetables, stems, roots, leaves or flowers that are cooked in order to bring them to a sufficient degree of dehydration to ensure their preservation’ <https://www.economie.gouv.fr/dgccrf/Publications/Vie-pratique/Fiches-pratiques/Confitures-gelees-marmelades-de-fruits>.

lowering it<sup>120</sup>. Seven MSs have called for a lowering of the minimum sugar content in jams in the Jam Directive during the targeted consultation<sup>121</sup>. Seven MSs have already used the possibility to adopt a derogation to the minimum in their national legislation<sup>122</sup>. In these MSs, consumers have access to products labelled jams that have a lower level of added sugar, and do not bear the health claim ‘reduced sugar’.

As stated in the Jam Directive, the derogation possibility exists to cater to national preferences and this translates in a heterogeneous range of minimum levels in the EU, from 30 to 55%. There are no calls, neither from MSs<sup>123</sup> nor from the sector<sup>124</sup>, to harmonise this, as they see this flexibility as necessary to ‘respect both consumer demand for lower sugar products and their cultural traditions and recipes’<sup>125</sup>. The sector has adapted to the variety of national levels for sugar content<sup>126</sup>. There have been no claims from either MSs or the sector that the principle of the free movement of products within the EU is not observed in accordance with the rules and principles laid down in the Treaty.

Some MSs do not see a need to revise the rule on sugar content in jams, either at EU level or only at national level, while some others do but would not agree on one value (the values set differ between 30% to 55%). There is a lack of consensus amongst MSs as to what could be a lower minimum level should this be revised in the Jam Directive.

There is already a segment of the jam market with reduced amount of added sugar, in compliance with the regulation on health claims made on foods<sup>127</sup>. To be able to claim that a jam is ‘reduced in sugar’, the reduction of sugar must at least 30%% compared to a similar jam and the amount of energy of the jam bearing the claim must be equal to or less than the amount of energy in a similar jam<sup>128</sup>. Even though the Jam Directive requires a minimum amount of sugar, it also foresees the possibility that product with a

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<sup>120</sup> Annex I of the Directive: “Without prejudice to Article 5(1) of Directive 2000/13/EC, Member States may, however, in order to take account of certain particular cases, authorise the reserved names for products defined in part I which have a soluble dry matter content of less than 60 %.”

<sup>121</sup> Germany, Denmark, Estonia, Spain, Finland, Croatia, Poland.

<sup>122</sup> France, Germany, and the Netherlands have set the minimum sugar content at 55%, Ireland is at 50%, whereas Austria and Italy have minimum content at 45%, with the added requirement in Italy that the label indicate ‘to be kept in the refrigerator after opening.’ The level in Portugal is even lower, at 30%. In reply to the targeted consultation, Poland explained that it already has national regulations on jams with a reduced sugar content, which is indicated to consumers in the name of these products and allows them to make informed choices in accordance with the principles of a balanced diet.

<sup>123</sup> No MS raised this in reply to the targeted consultation.

<sup>124</sup> See Profel’s submission of 14 January 2022.

<sup>125</sup> Ibid.

<sup>126</sup> Profel’s submission of 24 August 2021: “the Directive already allows for variations regarding a reduced sugar content when implementing the Directive at national level, while serving as the reference against which to measure any such national derogations. Therefore it would be wrong to assume that lowering the minimum soluble dry matter content of the Directive would result in an increase of reduced-sugar products.”

<sup>127</sup> <https://www.theguardian.com/lifeandstyle/2013/oct/30/jam-wars-reducing-sugar-britain>.

<sup>128</sup> Regulation (EC) No 1924/2006 of the European parliament and of the council of 20 December 2006 on nutrition and health claims made on foods: “REDUCED [NAME OF THE NUTRIENT] A claim stating that the content in one or more nutrients has been reduced, and any claim likely to have the same meaning for the consumer, may only be made where the reduction in content is at least 30 % compared to a similar product ... The claim ‘reduced sugars’, and any claim likely to have the same meaning for the consumer, may only be made if the amount of energy of the product bearing the claim is equal to or less than the amount of energy in a similar product.” <http://data.europa.eu/eli/reg/2006/1924/oj>.

reduced amount of sugar could co-exist while using the sales designation ‘jam’<sup>129</sup>. Combining the Jam Directive with the regulation on health claims, there are therefore two categories of products with the designation ‘jams’<sup>130</sup> with two different amounts of sugar: jams and reduced-sugar jams with at least 30% less sugar. Given that there is a fixed minimum in the Jam Directive, the sector has no flexibility what to market: it is either a jam with the required minimum amount of sugar or a sugar-reduced jam with at least 30% less sugar. The sector estimates that, for example in France, the reduced-sugar jam segment represents roughly 14% of the total jams’ sales (France is the main EU producer of jams, before Germany and Italy<sup>131</sup>). Other products containing very low level of or even no added sugar already exist on the EU market, they are designated as ‘fruit spreads’ and include other additives such as guar gum or xanthan to reach gel texture and provide a different culinary experience to consumers<sup>132</sup>.

In light of the above, this Section explores to what extent the marketing standard for jams and extra jams could be revised to lead to a lowering of the level of free sugars<sup>133</sup>.

The so called ‘Breakfast Directives’, including the Jam Directive, are the result of carefully balanced compromises between the various national preferences and, as past and current discussions with MSs and stakeholders have shown, politically sensitive. Because of this political sensitivity that goes beyond the mere technical nature of the amendment and the fact that policy choices will need to be made, it is considered necessary to provide in this Section details on various options for opening the Jam Directive to revise the formulation of jams to lower the level of free sugar and to identify ex-ante to the extent possible their respective potential economic, social and environmental impacts.

In parallel, a flexibility on the use of the product designation “marmalade” is explored in Annex IX, without affecting the product composition. This change is considered of a technical nature and thus was not selected to be examined in the same level of details.

### *10.3.2. Options to achieve the objectives*

#### **Baseline**

The Jam Directive remains unchanged, with a minimum amount of total sugar at 60% of the soluble dry matter, and the possibility for MSs to derogate to this minimum by lowering it in their national markets.

#### **Policy options**

In view of the above, the options to address the issue of sugar content in jams and jellies are:

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<sup>129</sup> See Article 2(4) of the Directive 2001/113/EC: “The labelling shall indicate the total sugar content by the words ‘total sugar content ... g per 100 g’, .... The sugar content need not, however, be indicated where a nutrition claim is made for sugars on the labelling pursuant to Directive 90/496/EEC”.

<sup>130</sup> Applicable as well to jellies, extra jams, extra jellies, marmalades, jelly marmalades and sweetened chestnut purées. The term ‘jams’ is used here as a generic.

<sup>131</sup> Study by Agrex Consulting for FranceAgriMer of December 2019 ‘Competitivite des produits de seconde transformation de l’industrie agroalimentaire francaise’.

<sup>132</sup> Conference call with Profel of 28 October 2021.

<sup>133</sup> The Jam Directive authorizes the use of sweeteners to replace wholly or partially the sugars of all products covered by the Jam Directive.

**Option I:** to remove the required minimum amount of sugar entirely in the Jam Directive<sup>134</sup>;

**Option II:** to lower the required minimum amount of sugar, and to set it at, for example, 55% like done in France, Germany and the Netherlands or at 50%;

**Option III:** to increase the general minimum fruit content to 450g/1000g (as opposed to 350g/1000g currently), so far reserved for ‘extra jam’ and ‘extra jelly’<sup>135</sup>. This option touches neither the minimum sugar content nor the possibility for MSs to derogate from it but rather replaces the current definition of jams and jellies by what currently qualifies as ‘extra jam’ or ‘extra jelly’. In addition, a new (even) higher fruit-content category would be created for what could be designated as ‘extra jam’ or ‘extra jelly’ after the revision<sup>136</sup>. However, this option does not necessarily exclude the previous ones and could be combined, in principle, with option I or with option II, but this would not affect their respective impacts, which are assessed individually.

### *10.3.3. Impacts of the different policy options*

#### **Likely economic impacts**

**Option I:** Without a standard sugar content at EU level, each operator would be able to use the designation ‘jam’ no matter what the level of sugar is, including added sugar, in the product. This would create disruption within the sector and increase confusion for consumers. It would de-segment the market. MSs would regulate at national level and trade within the single market would fall back to the basic principles of ‘Cassis de Dijon’<sup>137</sup>: national standards on sugar level would not prevent imports of jams with higher sugar content. In terms of flexibility for MSs, this option would have the same end-result as the current situation, because a national derogation possibility already exists in the Jam Directive, and, in practical terms, MSs would tend to keep their currently applied values for the minimum sugar content. On the other hand, it would remove any reference value that today is anchored in the Jam Directive<sup>138</sup>. It is likely that in such a scenario, several MSs (the ones not making use of the current derogation possibility) would revert to the Codex Alimentarius standard, which sets a range between 60 and 65%, so as to not disrupt external trade for their national operators; this would clearly defeat the purpose of the revision as sugar amounts in jam would remain as high if not higher than today. Moreover, in a situation where the EU minimum level is replaced by

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<sup>134</sup> For example, Germany proposed, in reply to the targeted consultation: “Regulation (EU) No 1169/2011 on the provision of food information to consumers requires the sugar content of pre-packaged foods to be indicated in the nutrition declaration. Article 2(4) of Directive 2001/113/EC, which contains the indication of the total sugar content of jams, jellies, marmalades and chestnut purée, should be deleted in the light of this background.”

<sup>135</sup> See the current ‘extra jam’ definition in Annex I, Part I Definitions of the Directive 2011/113/EC: “‘Extra jam’ is a mixture, brought to a suitable gelled consistency, of sugars, the unconcentrated pulp of one or more kinds of fruit and water. ... The quantity of pulp used for the manufacture of 1 000 g of finished product must not be less than: 450 g as a general rule, 350 g for redcurrants, rowanberries, sea-buckthorns, blackcurrants, rosehips and quinces, 250 g for ginger, 230 g for cashew apples, 80 g for passion fruit.”

<sup>136</sup> Range to be defined, but at least 500-550g of fruit per 1kg.

<sup>137</sup> Judgment of the Court of 20 February 1979. - Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein. - Reference for a preliminary ruling: Hessisches Finanzgericht - Germany. - Measures having an effect equivalent to quantitative restrictions. - Case 120/78.

<sup>138</sup> To note, when asked about the existing differences between MSs in terms of sugar content in jams, the sector explained that since they conform to cultural traditions and national consumer demand, the sector has necessarily adapted to them and it is economically sensible.



national levels fixed freely by MSs, it would be difficult for operators to use a health claim of 'reduced sugar' without a reference basis for comparison. Therefore, this option could disincentivise further the development of reduced-sugar jams.

In sum, the costs and burdens for operators who would have to adapt to potentially 27 diverging national regulation on sugar content and have difficulty to market a reduced-sugar product in this context, especially SMEs, and MSs having to regulate on the sugar content and control the sugar amount would increase considerably under this option, while the innovation would be put at risk.

**Option II:** Currently, the minimum is the EU rule, but for the few MSs which apply a derogation to allow a lower level. If the minimum is lowered to 55% or 50% of sugar, the economic impact for operators would be considerable (in MSs not applying the derogation) as they would have to reformulate their products and entirely adapt their labelling.

A minimum content fixed at EU level for jams allows a reference value for the claim 'reduced sugar', providing a valuable marketing tool for operators who have developed such products. If the value is reduced considerably below 60%, operators intending to claim 'reduced-sugar jam' would be obliged to reduce the sugar content to levels that would render the product barely consistent with a jam texture and even less preservable<sup>139</sup>. This would also disincentivise the development of reduced-sugar jams. Currently, jams with a 42-43% of sugar content have almost the same mouthfeel as regular jams, but a much shorter preservation once the pot is opened, as the sector confirmed<sup>140</sup>. Lowering across the board the minimum amount of sugar at 55 or even 50% could in effect make the 'reduced-sugar' jams segment disappear. Indeed, with these levels of sugar, the claim 'reduced-sugar' could no longer be used, since it would require that the jams contain only 38.5% (for a standard at 55%) or less of sugar, a level at which the product no longer has the characteristics of a jam since it would have serious problems of preservation, mouthfeel and consistency<sup>141</sup>.

Moreover, under this option, the industry would have to re-orient all of their production lines, reformulate all of their recipes for MSs where lower level of sugars were not yet allowed. This would have a non-negligible economic impact on the industry. First, the pectins that can be used with lower sugar level, an essential ingredient to induce the jellification, are twice as expensive as the standard pectins, and they are twice as costly<sup>142</sup>. So the cost of manufacture would be significantly increased. Second, the density of the added sugar (1,59g/ml) is much higher than the density of fruits (+/-1g/ml). So, if sugar content is lowered across the board, it would have an impact on the sizing of the jars for all the products, or reversely on the price per kilo of product if the jars are not resized, i.e. either a major economic impact on the supply chain if jars are resized, or a price increase for each buying act for the consumer if they are not. In addition, if the industry considers keeping the same volume for jars, they will contain less jam (in term

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<sup>139</sup> Conference call with Profel of 27 January 2022.

<sup>140</sup> Conference call with Profel of 27 January 2022 and meeting with Profel and Andros/Materne of 27 June 2022: not only is the jam with reduced-sugar not preservable outside a refrigerated area, but it will only preserve a few weeks at most, compared to several months for normal jam.

<sup>141</sup> Conference call with Profel of 27 January 2022 and meeting with Profel and Andros/Materne of 27 June 2022.

<sup>142</sup> Meeting with Profel and Andros/Materne of 27 June 2022.

of weight) that will either not preserve well or contain preservatives (that we would have to authorize if we want to avoid food waste).

The EU would also have a lower level of sugar content than other third countries whose requirements are aligned to the Codex Alimentarius. This measure could have an impact on trade, especially with our main trading partners for jams because EU jams would no longer conform to the international standards, as they would be too low in sugars. In 2020, the EU exported 43.7 million euros worth of jams to the UK, 16.3 million euros to Russia, 7.5 million euros to China and 5.5 million euros to Israel<sup>143</sup>. There would be trade disruptions as products from the EU with a lower total sugar content than the one of the Codex Alimentarius (a range of 60 to 65% or greater) could no longer be marketed as jams or jellies outside the EU<sup>144</sup>. On the other hand, since the total sugar content is only a minimum, any imported product with a total sugar content above this minimum could continue to be marketed as “jam” in the EU.

In sum, this option would have a significant economic impact.

***Option III:*** Raising the content of fruit in jams would automatically reduce the sugar added. This could theoretically raise the costs for the processors but this is estimated to be a marginal increase as the vast majority of jams produced in the EU already have a level of fruit content equal to or above the one currently required for extra jams. It would however improve the general quality of the final product. Fruit is, in principle but not always, more expensive than sugar and its availability is less stable, depending on weather events, quality of the crops and fresh consumption demand. Raising the fruit content in jams to the level of extra jams across the board would only have an impact of cost and organisation of production on manufacturers that do not produce extra jams, because for their products, they would have to modify their production to increase the fruit content to continue using the product name ‘jam’. The segment of extra jams is however already dominant in several MSs, so a majority of manufacturers are already producing and selling jams with higher fruit content and in practice, they have part of their production lines devoted to jams aside from those for extra jams<sup>145</sup>. Products with lower fruit content could still be marketed as fruit spread, but no longer as jam, and compete with the range of fruit spreads already developing on the market. The economic impact would therefore be rather limited. Moreover, this is the segment with the largest consumer demand and the retailers have pushed the demand on the industry to increase their output of extra jam, so prices at retail level in several MSs are already equivalent for jams and extra jams<sup>146</sup>. The current ‘extra jams’ and ‘extra jellies’ would be marketed as ‘jams’ and ‘jellies’ respectively, and a new premium segment would be created to with an even higher fruit-content for what could be designated as ‘extra jam’ or ‘extra jelly’ after the revision. The outcome of which would be a better market segmentation in respect to the current thresholds.

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<sup>143</sup> Source: Eurostat (Comext), latest update: 17 Jan 2022 for product 200710 - Jams, fruit jellies, marmalades, fruit or nut purée and fruit or nut pastes, obtained by cooking, whether or not containing added sugar or other sweetening matter, homogenised preparations. Reversely, the EU only imported from the United Kingdom 16.6 million euros and Turkey 1.3 million euros, and other third country imports were much lower.

<sup>144</sup> Profel explains: “The Codex Standard fixes the brix level for jam at 60° brix, and it is common practice for many Export markets to use this Standard as the basis for their requirements. A modification of the European products could result in EU based manufacturers no longer able to export the standard products to export markets (albeit with specific labelling), and not being commercially viable when including the additional costs involved with holding additional stock keeping units (SKUs).” Profel’s submission of 14 January 2022.

<sup>145</sup> Conference call with Profel of 27 January 2022.

<sup>146</sup> Conference call with Profel of 27 January 2022. Meeting with Profel and Andros/Materne on 27 June 2022.

There would be some costs to the sector to adapt all the labels for packaging. This economic impact could be addressed in a similar way as it was addressed with the Jam Directive on fruit juice with a transition phase in the application of the new rules, so as to get rid of stocks. These costs, however, could be recouped especially for the most dynamic operators who would wish to diversify their market supply further towards higher quality and prices. In fact, as the extra jam reached a considerable market share, part of the industry has already been looking for further market segmentation, and in this respect the present option would create an economic opportunity.

This would be compatible with the international marketing standard, the Codex Alimentarius, as it already foresees that countries can elect to designate as ‘jam’ product containing not less than 45% fruit in the finished product. Moreover, this would apply without discrimination to both EU produced jams and imported jams. Finally, as already explained, the majority of jams sold on the EU market, whether EU produced or imported, already is ‘extra jam’ containing at least 450 g of fruit per kilo. As result, no significant impact on trade is expected with this change.

To summarise the potential impact on international trade, Option I removes the minimum total sugar content requirement (less trade-restrictive), Option II lowers the minimum total sugar content requirement and EU exports to third countries could not be labelled “jam” anymore in these countries (trade-restrictive) and Option III increases the total fruit content requirement, which is compatible with the existing international standard (less trade-restrictive). None of the options imply any discrimination between domestic/imported products. Option I does not contribute to the objective of reformulating the products with less sugar added, while Options II and III do, but Option II has a significant economic impact and is more trade-restrictive, putting EU producers at a disadvantage. There is no other less trade restrictive option contributing to the same extent to the policy objective in question.

### **Likely impact on SMEs and competitiveness**

The jam market is a mature market, where incumbents are striving to maintain their market shares based on products that vary relatively little<sup>147</sup>. In France, Germany, Belgium, Finland, or Hungary, for example, the market is shared between large groups and a number of smaller undertakings. Smaller players that sell their products through supermarkets can be faced with an unfavourable balance of power compared to large groups that dominate the market<sup>148</sup>. However, even in such a mature market, smaller undertakings are still able to differentiate themselves and gain market shares in their domestic market as well as on export markets<sup>149</sup>. The options touching on the sugar content could affect operators, with large players perhaps better placed to absorb with cost adjustments given the economies of scale linked to size. Having said this, SMEs would have more flexibility to change their production lines because of the smaller scale of production concerned. As SMEs are in general closer to the territory and to the suppliers of fruit, Option III would be more favourable to them, providing them with the opportunity to use these links to source more fruit to produce higher value added products.

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<sup>147</sup> Businesscoot, The Jam Market - France, 13 December 2021.

<sup>148</sup> Businesscoot, The Jam Market - France, 13 December 2021.

<sup>149</sup> See e.g. ‘Rigoni di Asiago, double-digit growth in 2020’ <https://www.efanews.eu/en/item/16814-rigoni-di-asiago-double-digit-growth-in-2020.html>.

## Likely social impacts

The average consumption of jam is between 20-30g per serving as an add-on to other foods, such as bread or yogurt<sup>150</sup>. The average sugar intake from a single serving of jam is limited. Nevertheless, as explained in the previous Section on fruit juices, the European Consumer Association BEUC acknowledges that for the transition towards more sustainable food systems to materialise, consumers need to change their lifestyle and diets, and for this they need better information, regulations and nudging<sup>151</sup>. Empowering consumers to make informed, healthy and sustainable food choices is one of the objectives of the F2F strategy<sup>152</sup>. Ensuring that the consumers get more wholesome products (jams with higher complete fruit content and less free sugar) would contribute to that objective. The three options respond to the F2F objective on the reformulation of processed products, in particular aiming at reducing the amount of free sugars in jams, towards a healthier food consumption (health sustainability).

***Options I and II:*** From a food waste perspective, a minimum amount of sugar is necessary to ensure a practicable shelf life<sup>153</sup>. Jams with lower amount of sugar are de facto often specifically labelled as ‘to be kept in the refrigerator after opening’ (e.g. Italian legislation<sup>154</sup>) and the lower the amount of sugar, the shorter the shelf life once the jam pot has been opened. If the sugar content is lowered, the shelf life becomes a factor to be considered in weighing the options. As noted above, in Italy, the minimum has been lowered to 45% but the impact on the shelf life was considered significant enough to require the additional labelling. Setting the content below 60%, within a range where jellification would still be sufficiently stable<sup>155</sup>, would require choosing a shorter shelf-life, depending on diverging personal consumption habits (i.e. how many times it is taken out of the refrigerator after opening and until it is finished, depending on how long the open jar is left unrefrigerated while in use, at which room temperature, etc.). As a consequence, this durability aspect could drive also a packaging adaptation towards smaller conditioning portions with the related problem of packaging increase and possible packaging waste. Robust and reliable evidence is currently not available to confidently go down the path.

From a nutritional point of view, any of the options altering the minimum content of sugar (whether removing it or lowering it) does not properly address the nutritional problem, as a higher sugar content than 50% or 55% would still be allowed. Option I and II are the only possible options for fruit jellies. In order to provide a health benefit, only reduced (total) sugar fruit jellies could be considered.

***Option III:*** This option would have no impact on the shelf life of the jams, as the minimum level of sugar is not changed, while the free sugars would be lower. The option would aim to impact the level of free sugar in jams and the amount of complete fruit

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<sup>150</sup> Profel’s submission of 14 January 2022. Notably, portions used in the food service are usually around 28g, which, according to Profel, corresponds to enough to spread on two slices of bread.

<sup>151</sup> Meeting with BEUC on 5 January 2022 on food labelling and promotion.

<sup>152</sup> See section 2.4 of the F2F.

<sup>153</sup> The jellification limits the possibilities of exchange with the outside (risk of fermentation and mould development) and prevents the migration of elements within the jam (recrystallization of sugar). Jellification is a function of a careful balance between sugar, acidity and pectins (the most commonly used gelling agent). Conference call with Profel of 27 January 2022.

<sup>154</sup> See JRC literature review.

<sup>155</sup> The sector considers that below circa 30%, the jellification is no longer adequate. Conference call with Profel, 27 January 2022.

consumed, but not the shelf life, since the total sugar content would remain unchanged. It would also not remove the possibility for MSs to authorise lower minimum sugar content and not prevent the marketing of ‘reduced-sugar’ jams; therefore, consumers would get higher quality jam with more complete fruit content without undermining possibilities for reduced sugar products. At equal serving size, this change would lead to an increase of the complete fruit content in jams and a lower intake of free sugars. From a nutritional point of view, should consumer not otherwise change their dietary habits in the preferred option and continue to consume the same proportion of jams, under this option their free sugars intake would decrease and they would consume more complete fruit. This is however very relative, given that the market share of standard jams is already limited in the EU. The main impact of this option would be to no longer have products with lower complete fruit content available on the EU market, raising the standard across the board for consumers, ensuring higher quality for consumers. According to the sector, standard jam is actually mostly purchased by institutional catering, such as hospitals, nursing homes, schools and the like<sup>156</sup>. With the increase in fruit content across the board, these populations would be offered a better quality product.

Incidentally, raising the fruit content in jams across the board also means that fruit producers would have a potentially greater outlet for their produce that cannot be sold for fresh consumption, addressing indirectly the issue of waste along the supply chain<sup>157</sup>.

It is important to note that jellies are already a product produced from fruit juice and sugar, rather than from fruit pulp like jams. From a nutritional point of view, the natural sugar contained in jellies is health-wise not superior to ‘added sugars’<sup>158</sup>. As regards jellies specifically, the revision would therefore not have a significant impact from a nutritional point of view.

### **Likely environmental impacts**

***Options I and II:*** As regards food waste, the same considerations made above are valid here as well. Direct environmental impacts are not expected. Jams would still be produced on the basis of complete fruit as raw materials and added sugar. As explained below, the amount of added sugar used in jams would depend on national standards, and to arrive at product with shelf life and gel consistency required for jams, these national standards would be within the range of the current EU standard. As regards Option II, a real decrease on the minimum sugar content could affect the self-live durability and therefore possibly would increase food waste in the short term and drive changes in the longer term towards smaller portion conditioning with the consequent increase in packaging use and waste. Moreover, reducing sugar content requires using specific pectins to jellyfy the jam, and twice as much. Yet, pectins are not used as dry matter, but in an aqueous solution. This means that to obtain the same amount of jam, more energy

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<sup>156</sup> Meeting with Profel and Andros/Materne on 27 June 2022.

<sup>157</sup> The magnitude of this effect is not quantifiable, part of the producers dedicate their production to transformation, others use it as an outlet, and whether a product not marketable for fresh consumption is nevertheless suitable for transformation depends on the type of aspect affecting its marketability, on the organisation of the producer and the processor to purchase this product and on the product itself (whether it is an apple or a strawberry, whether it is the necessary Brix level, taste, etc.).

<sup>158</sup> See EU Framework for national initiatives on selected nutrients, Annex II: Added Sugars, Introduction: “The term “added sugars” is additionally considered to include sugars present in honey, syrups, and fruit juices and fruit juice concentrates.” [https://ec.europa.eu/health/publications/added-sugars-annex-eu-framework-national-initiatives-selected-nutrients\\_en](https://ec.europa.eu/health/publications/added-sugars-annex-eu-framework-national-initiatives-selected-nutrients_en).

would have to be used to evaporate the excessive water<sup>159</sup>. Finally, because of the higher level of water in a lower sugar jam, the pasteurising time is increased to limit as much as possible the development of mould and bacteria, which also requires an added consumption of energy. Therefore, Option II has the highest environmental impact of all three Options.

**Option III:** No direct environmental effect is expected. Fruit used in jam and jelly production are the same as produced for fresh consumption and fruit producers generally favour selling their production for fresh consumption because they get a better price<sup>160</sup>. Processing into jams is an outlet for fruit that do not conform to marketing standards for fresh consumption, because of size or appearance. In addition, given the small segment of the jam market currently represented by ‘standard’ jams, increasing the minimum fruit content in jams would only impact a limited proportion of the jam produced and consumed. This segment will either be absorbed by the existing ‘extra jam’ segment, or continue to be marketed under a different sales designation than ‘jam’, or disappear. Therefore, increasing the fruit content in jams is not anticipated to lead to an increase in production. If anything, it may create an increased outlet for fruit not conforming to marketing standards for fresh consumption and in this sense, have a positive impact on food waste. However, this positive impact is difficult to quantify, as it depends on each type of fruit and each producing region in the EU.

#### **Likely impacts on simplification or administrative burden**

**Option I:** As explained above, MSs could decide to occupy the ground abandoned by the EU standard by referring to the Codex Alimentarius or by setting their own national standards. In terms of controls and checks on conformity of labelling, it would create an additional administrative burden.

**Option II:** The controls would be the same as before, as they are already based on a risk analysis for all marketing standards<sup>161</sup>. Modifying one aspect of an already existing marketing standard such as the one on jams will require to adapt methods for inspection and authenticity and fraud controls with this changed parameter, but it does not entail creating new controls. It would replace the derogations already existing in France, Germany and the Netherlands for example, so it could be considered as a simplification.

**Option III:** As in Option II, the controls would be the same as before, as they are already based on a risk analysis for all marketing standards<sup>162</sup>. Modifying one aspect of an already existing marketing standard such as the one on jams will require to adapt

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<sup>159</sup> Meeting with Profel and Andros/Materne on 27 June 2022: 20-30min of additional cooking time would be required to obtain the correct consistency, which would in turn also degrade the fruit quality.

<sup>160</sup> See e.g. <https://www.freshplaza.com/article/9376260/prices-for-idared-apples-dropped-to-price-level-of-industrial-apples-in-poland/> ‘Wholesale prices for apples of this variety are announced at the level of 0.40-0.50 PLN/kg (\$0.10-0.12/kg). However, real sales of large batches of Idared apples are made even at 0.30 PLN/kg (\$0.07/kg) – this is the price level of industrial apples.’

<sup>161</sup> Article 90a(3) of 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: “Member States shall carry out checks, based on a risk analysis, in order to verify whether the products referred to in Article 1(2) conform to the rules laid down in this Section and shall apply administrative penalties as appropriate.”

<sup>162</sup> Article 90a(3) of 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: “Member States shall carry out checks, based on a risk analysis, in order to verify whether the products referred to in Article 1(2) conform to the rules laid down in this Section and shall apply administrative penalties as appropriate.”

methods for inspection and authenticity and fraud controls with this changed parameter, but it does not entail creating new controls. The Codex Alimentarius for jams already allows this possibility, so this would not entail a misalignment with the international standard or complicate MSs' controls to a large degree<sup>163</sup>. However, operators who want to continue to market products with a low fruit content (i.e. 350 to 450 g per kilo of finished product) will have to change their sales designations and therefore their labelling.

### **Who would likely be affected**

Economic operators such as jam manufacturers would be affected as they would have to reformulate their products and reorganise their production lines, to adapt to either new national standard or a new EU standard, assuming they do not settle for a different sales designation than jam. Most of the manufacturers in extra jam would however have an opportunity to re-segment their market to a higher value-added product under Option III. Under Option III, fruit producers would stand to benefit as they would have an increased outlet for their production. This would not be the case under the other two options. Consumers would either have a product with lower sugar content across the board (Option II), but with less margin for products using the claim 'reduced sugar', and less guaranteed nutritional and preservation characteristics or a product with higher complete fruit content across the board (Option III), with the possibility of national derogations for lower sugar and claiming 'low sugar' products. In the case of removing the minimum amount of sugar (Option I), consumers might find it difficult to compare products conforming to different national standards in terms of sugar content and public authorities would also have to deal with the different national standards in terms of controls and labelling.

#### *10.3.4. Comparison of options*

### **Effectiveness**

Only Options II and III would have the actual effect of reducing the amount of added sugar in jams and jellies and thus ultimately potentially contribute to reducing sugar intake.

Under Option I, as explained, it is likely that several MSs would revert to the Codex Alimentarius standard, which sets a range between 60 and 65%, so as to not disrupt external trade for their national operators; this would be ineffective as sugar amounts in jam would remain as high if not higher than today.

### **Coherence**

In terms of coherence with the current FIC Regulation and its ongoing revision, all three Options would neither overlap with it nor would they be incoherent with it. First, the FIC Regulation covers all products sold for consumer consumption and does not provide for specific rules regarding jams, which are thus contained in the Jams Directive. All three Options cover the composition and labelling of jams, which would only be regulated the Jams Directive. Second, none of the Options propose to derogate from the FIC Regulation or its revision regarding front-of-pack labelling or nutrient profile. All the

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<sup>163</sup> See sections 3.1.2(a) and 8.2.1 of the Codex Alimentarius.

Options actually complement the FIC Regulation where the latter does not provide any specific prescriptions on fruit or sugar content on jams.

## Efficiency

The Options changing the amount of sugar (i.e. lowering the minimum amount of sugar or removing the minimum sugar amount) have more drawbacks than advantages. Removing the minimum amount entirely would open the door to different national standards, with little effect on consumer health if the content of free sugars in jams and jellies is not reduced.

Changing the threshold for the amount of sugar in jams for proper preservation, consistency and mouthfeel is highly technical, would have significant economic impact and non-negligible environmental impact, and might not result in a consensus among MSs – i.e. there could be a lot of debate whether the value should be at 45, 50 or 55%.

The Option to lift the standard by allowing the continued use of the sales designation ‘jam’ and ‘jelly’ only for products with a higher minimum fruit content than currently the case would ensure that, for jams, only higher quality products – i.e. those with more complete fruit and therefore less free sugars – could be marketed as jam. This approach based on the fruit content would reduce the amount of free sugars in jams without opening the technical issue of lowering the minimum amount of sugar, which might not reach a consensus amongst MSs and, even if it would, it would have costly consequences on all affected actors. Consumers would get access to ‘jams’ with higher fruit content and less free sugar. On balance, with a view to serving the objective of a reformulation of processed products, this Option appears to be the most efficient for jams.

	Baseline	Option I	Option II	Option III
<b>Costs</b>				
Compliance costs incurred by food business operators (direct)	0	--	--	-
Regulatory costs incurred by regulators (direct)	0	--	-	-
Negative effects on market functioning (market disruption for food business operators, reduced innovation, consumer confusion)	0	--	--	-
<b>Benefits</b>				
Economic opportunities for food business operators (direct)	0	0	0	+
Wider range of products/services (direct)	0	+	+	+
Improved welfare, health (indirect)	0	0	+	++



### 10.3.5. Preferred option

In light of the above, the preferred option is Option III - to increase the minimum complete fruit content in jams and jellies. The current level of fruit content used for 'extra jam' and 'extra jellies' could be used as the new level of fruit content to be used for 'jams' and 'jellies', while a yet-higher fruit content value could be used for the products named 'extra jam' and 'extra jellies'. This is an economically sound option based on demand-driven market segmentation considerations, both from a single market and international trade point of view, which promotes more wholesome product with less free sugars. It does not create additional food waste. It creates no new administrative burden and is the most likely to reach MSs approval, while maintaining the status quo on the possibility for MSs to adapt to their national preferences and reduce in their national legislation the minimum sugar content of jams and jellies, hence for MSs that have not already done so to lower in their national legislation the minimum sugar content of jams and jellies.

While Option II of lowering across the board the sugar content of jams would have a simplification aspect, given the variety of positions among MSs on the actual value to be set, this Option is the least likely to reach MSs' approval. In addition, this Option would have a significant economic impacts, potentially create additional food waste and a non-negligible environmental impact. Finally, Option I would not fulfil the objective because the legal void would likely be replaced by a diversity of national approaches or at least a reference to the international standard of 60-65%.

### 10.3.6. Monitoring and evaluation of impacts

Reviewing at regular intervals the level of sales of jams and other products covered by the Jam Directive vs other spreadable products or other fruit-based products, as well as expanding the scope of existing surveys such as Eurostat's survey on consumption of F&V, as well as national nutritional surveys, to other products containing fruit will both be used to evaluate the level of consumption of jams and jellies in the EU. Here also, the Commission will make use of existing channels to monitor the implementation and collect information and data on how the marketing standards are implemented in the market by operators, how they are perceived by consumers, how they are controlled by authorities, what their general added value is. This includes tabling a regular dedicated discussion on the standards in the Expert Group on the Common Organisation of the Market in agricultural products with delegates from MS authorities and in the Civil Dialogue Group with relevant stakeholders. The information will then be used, together with others, in a study that the Commission foresees to conduct within five years of the application of the revision on the functioning of the marketing standards and their contribution to the market functioning, including for the modifications that are covered in this impact assessment. This study should not come too close after the regulatory changes come into force, so as to leave enough time for business operators to adapt and for consumers to lastingly change their purchasing behaviours.

Objectives	Measures of success and monitoring indicators
1. Processed products should be reformulated to have lower added sugar.	<i>Jams and jellies are produced using lower amounts of added sugars</i>
	- Composition of jams and jellies marketed in the EU (market research)
2. Consumers should have access to processed products containing	<i>Choices of jams and jellies offered to consumers contain lower levels of added sugar</i>

lower levels of added sugar.	<ul style="list-style-type: none"> <li>- Consumer perceptions (consumer research)</li> <li>- Statistics on consumer purchasing behaviour changes (market research, including sales of jams vs other products)</li> <li>- Statistics on household consumption of products containing fruit and vegetables (including Eurostat’s survey on consumption of F&amp;V, as well as national nutritional surveys)</li> <li>- Consistency of Member States implementation and enforcement (Member States reports in the Expert Group on the Common Organisation of the Market in agricultural products with delegates from MS authorities)</li> </ul>
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## 10.4. Marketing standards for honey

### 10.4.1. Problem definition

The market for honey in the EU is growing, according to Euromonitor data, from EUR 2.0 billion in 2019 to EUR 2.2 billion in 2020 to EUR 2.3 billion in 2021.<sup>164</sup> With an annual production of 218 000t<sup>165</sup> the EU is the world’s second largest producer (after China). 12% of the world honey production comes from the EU. Importing 175 000 t/year<sup>166</sup>, the EU is also the world’s second importer of honey (after the US), representing 30% of the world’s honey imports. Imported honeys are mainly used on honey blends that are labelled as ‘Blend of non-EU honeys’ or ‘Blend of EU and non-EU honeys’.

The revision of Council Directive 2001/110/EC (‘Honey Directive’)<sup>167</sup> is controversially discussed. Stakeholders and certain MSs have been very vocal about an urgent review at Council level that should ‘improve’ on the origin labelling of honey and introduce obligatory country of origin labelling for honey blends. Honey origin labelling has also been raised in parliamentary questions<sup>168</sup>. In the public consultation, beekeeping organisations voiced their preference for stricter country of origin labelling, whereas honey packers showed a preference for ‘EU/non EU’ labelling. Against this backdrop and its political sensitivity, the standard has been chosen for a more detailed impact assessment.

The Honey Directive lays down a marketing standard for honey. (Article 75 of the CMO, which lists the agricultural sectors for purposes of marketing standards, does not cover honey.) This particular legal basis makes the Honey Directive a specific case that differs from other marketing standards. Rules on origin labelling are laid down in the current Honey Directive with a specific reference (in Art.4(b)) to Regulation 1169/2011 on food information to consumers. The Directive lays down quality and labelling provisions for honey<sup>169</sup>. The Directive stipulates *inter alia* that the country or countries of origin shall be indicated on honey. However, if honey originates in more than one country, it may instead be labelled ‘Blend of EU honeys’, ‘Blend of non-EU honeys’ or ‘Blend of EU and non-EU honeys’ (Article 2(4) of the Directive) depending on the respective multiple origins.

<sup>164</sup> Extracted from Euromonitor Passport data, total value retail selling price in current prices.

<sup>165</sup> FAO data 2020.

<sup>166</sup> UN Comtrade 2020.

<sup>167</sup> <http://data.europa.eu/eli/dir/2001/110/oj>.

<sup>168</sup> For example: [https://www.europarl.europa.eu/doceo/document/E-9-2020-006450\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2020-006450_EN.html).

<sup>169</sup> <https://www.fao.org/fao-who-codexalimentarius/about-codex/en/>.

MSs and stakeholders have been calling for changes to the Directive's provisions on origin labelling. So far the Commission considered the existing rules as proportionate and in line with the existing horizontal rules on origin labelling of food as laid down in FIC<sup>170</sup>, which stipulates that food information shall not be misleading, in particular as to the country of origin. In December 2020, the Council discussed the question. MSs did not agree on Council conclusions proposed by the German Presidency. The Presidency conclusions from December 2020 call upon the Commission to start working on a legislative proposal to amend the Honey Directive with a view to introducing rules that require the specification of the countries of origin of the honey used in honey blends<sup>171</sup>. The current rules allow the indication of countries of origin in honey blends but operators also have the possibility to use simplified labelling (EU/non-EU) for blends. In such cases, consumers would be unable to discern from which countries specifically the honey in a blend originates and in which proportions/shares.

With a self-sufficiency of about 60%<sup>172</sup> the EU market depends on imports of honey from third countries. Currently, the EU imports honey from 120 countries. Eight countries account for more than 90% of all EU imports (Ukraine, China, Mexico, Argentina, Cuba, Brazil, Uruguay and Turkey)<sup>173</sup>. The main importing MSs are Germany, Poland, Belgium and Spain. Most of the imported honey is used in blends and marketed in retail under brand names. About 80% of the honeys sold in retail are blends<sup>174</sup>. Blends of honey may contain honey from more than ten countries.<sup>175</sup>

Some MSs also want the respective shares (in percentages) of blended multiple-country of origin honey to be labelled. Others argue in favour of keeping the existing rule, i.e. allowing indications such as 'blend of EU honeys', 'blend of non-EU honeys', 'blend of EU and non-EU honeys'. Where third-country honey is concerned, the European Federation of Honey Packers and Distributors (F.E.E.D.M.) could envisage introducing labelling of geographical regions, e.g. 'honey from Central America', but this is not the preferred option for a majority of MSs.

#### *10.4.2. Options to achieve the objectives*

##### **Baseline**

The status quo would be to continue with mandatory country of origin labelling for honey but allow the EU/non-EU labelling of blends. Depending how relevant origin information is for the individual consumer, the existing rules allow everybody to make an informed choice.

##### **Policy options**

As regards the origin labelling of honey blends, the following options appear possible:

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<sup>170</sup> Regulation (EU) No 1609/2011.

<sup>171</sup> <https://data.consilium.europa.eu/doc/document/ST-14048-2020-INIT/en/pdf>.

<sup>172</sup> The EU produces ~218 000 tonnes of honey per year, imports 175 000 tonnes and exports 30 000 tonnes, DG AGRI market presentation [https://ec.europa.eu/info/food-farming-fisheries/animals-and-animal-products/animal-products/honey\\_en](https://ec.europa.eu/info/food-farming-fisheries/animals-and-animal-products/animal-products/honey_en).

<sup>173</sup> COMEXT data 2017-2021.

<sup>174</sup> Information from F.E.E.D.M. (European Federation of Honey Packers and Distributors).

<sup>175</sup> Public Consultation specific contribution F.E.D.E.M., p. 2.

- *Option I:* continued use of ‘EU’ with a replacement of the term ‘non-EU’ with the non-EU countries of origin
- *Option II:* continued use of ‘EU’ with a replacement of the term ‘non-EU’ with transnational geographic region of origin
- *Option III:* obligatory indication of all individual countries of origin (Member States and third countries)
- *Option IV:* obligatory indication of all individual countries of origin (Member States and third countries), including the percentage

#### *10.4.3. Impacts of the different policy options*

### **Likely economic impacts**

Consumers interested in the origin of the honey they buy find currently a broad choice of single-origin honeys in supermarkets. However, when it comes to (cheaper) honey blends, they are often confronted with the label ‘blend of EU and non-EU honeys’. If such honey is 10% from the EU and 90% from non-EU countries, or vice versa, consumers would not know. Consumers buying the cheaper product get less information. On the other hand, keeping labelling costs down may contribute to the supply of cheaper products to consumers who may not have strong preferences regarding the origin of the honey they buy and who are happy with the status quo.

Several MSs have already implemented or have notified the intention to implement national rules concerning the indication of the precise origin of honey in blends packed in their territories (e.g. IT, EL, ES, FR, PT and RO), which is in line with the current Directive and if introduced at EU level correspond to option III.

Stakeholders reported that changing the current provisions on honey origin labelling towards obligatory indication of the origin of honey in honey blends would have a potentially significant economic impact on honey packers that buy honey in bulk from producers in and outside the EU, often blend it and sell it to retailers. The honey packers use blends to achieve a stable quality (taste, colour, liquidity) and are happy with the status quo. Honey blends are determined mainly by floral origin (e.g. robinia, sunflower) and less by geographic origin (e.g. Spain, Ukraine). The current blend labelling requirements (EU/non-EU) facilitate this business model as they allow flexibility in the underlying composition of the honey without occasioning the need to change the label.

The consequence of labelling the country of origin for honey blends (option I, II, III, IV) would be that packers would have to frequently change labels on consumer packs whenever the origin of honey changes which in particular would make options III and IV difficult for them. Space on honey labels is also limited, in particular when honey is sold in portion packs (e.g. 20 g) for out-of-home consumption.

Honey packers highlighted the economic impact in the public consultation<sup>176</sup>. On the other hand, representatives of EU beekeepers call for country-of-origin labelling (Options III and IV) with a view to allowing consumers to make more informed decisions. To the extent that producers in third countries were no longer lumped together as ‘non-EU’, they could better differentiate their honey in the blends and appeal to consumers. Even if some EU producers claim that country-of-origin labelling will stimulate consumers to

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<sup>176</sup> Specific contribution to the public consultation by F.E.E.D.M. p. 2.

choose EU origin it is unlikely that honey imports are negatively impacted given the low self-sufficiency of honey and the price competitiveness of imported honey.

The changes of origin labelling fall under the definition of technical regulation of the WTO Agreement on Technical Barriers to Trade (TBT Agreement). Therefore, the TBT Agreement applies to these requirements. The TBT Agreement provides in particular that “technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective” and follow a principle of non-discrimination against imports from third countries. The proposed change (option III) does not imply any discrimination between domestic/imported products and in scope is not more trade restrictive than necessary to fulfil its objective, namely to inform consumers (for example about the origin of food).

### **Likely impact on SMEs and competitiveness**

EU honey producers, which are almost exclusively SMEs, could benefit from a potentially growing market due to better consumer information; they could also benefit from the possibility to better differentiate and valorise their honey in the blends. This could be achieved by combining on a pack’s label the origin (countries) of the honey as well as the respective constituent shares. Different degrees of the granularity of the data can be envisaged. Option II and III would most likely have such positive effect on EU honey producers, option I and option IV to a lesser extent.

On the other hand, honey packers, who are often also SMEs, would be negatively affected. Again, the impact on them would be different in accordance with the level of detail required from the label. In particular Option IV increases administrative burden for packers. Transnational geographical indications would allow the packers more leeway in not having to relabel their products and trace their inputs than a country-of-origin labelling would.

### **Likely social impacts**

There is interest from consumers to know details about the origin of honey in blends. Consumer organisations did not raise the point in the public consultation but did so in previous Civil Dialogue Groups for apiculture. So all options going beyond the baseline (I, II, III, IV) would address improved consumer information in general.

Given that producers are generally speaking SMEs situated in rural areas, they stand to benefit from more detailed origin labelling of honey blends. Such effect would be relevant for all options beyond the status quo.

Consumers that are less interested in the origin of blended honey could potentially face higher honey prices when rules on origin labelling would be strengthened if operators reflect (part of) these additional higher costs in their prices. This negative effect would go along with the detailed requirements of origin information that is given. Option IV would increase prices of cheap retail brands the most, option III less and option I and II probably not at all.

### **Likely environmental impacts**

Mere labelling changes are not expected to change the environmental impacts of honey production, even if the contribution of beekeeping to pollination and biodiversity is clear.

Strengthening the rules of origin labelling (in particular options III and IV) might stimulate informed consumers to buy honey from certain countries which will have a positive impact on the beekeeping sector in these countries and the connected effects on pollination and biodiversity.

### **Likely impacts on simplification or administrative burden**

As is the case for other products, also for honey the problem in relation to origin labelling is that there are no methods of analysis that would allow determining the country of origin based on a sample of the product. This is not possible for single origin products and certainly not for blends. Checks on origin can only be based on documentation and would require more sophisticated traceability and segregation systems to be put in place.

If country-of-origin labelling for honey blends were introduced, this would entail some additional challenges for the controls. For a system based on country-of-origin labelling to be credible, the corresponding control regime would have to be based on checking documentation of the blending process at the level of the honey packers. This would be even more the case for percentages (option IV). Such a regime would introduce administrative costs for MSs and would also increase compliance costs for the packers. However, the additional control efforts would take place within the framework of already existing controls, sometimes even in combination with other food related controls, so that the total administrative costs for honey controls would only increase marginally.

In contrast to the case of olive oil, the EU is a net importer of honey, with a high diversity of origins and a retail market dominated by blends.

Experience with country-of-origin labelling in other products has shown the limits of labelling the countries of origin in mixture products, as foreseen in options III and IV. For instance, country-of-origin labelling is well established for several meats<sup>177</sup> (beef, pigmeat, poultry, sheep and goats); minced meat, however, can also be labelled as 'EU/non-EU origin' (the current status quo for honey).

### **Who would likely be affected**

Introducing country-of-origin labelling for honey blends (options I, II, III, IV) is likely to benefit producers in the EU, assuming that certain consumers increasingly look for regional sources of foodstuff. Honey packers would be negatively affected. The impact on consumers is mixed, with better information but possibly higher prices for the blends (see under social impacts). Impacts on honey producers in third countries are minor, certain origins might welcome a more differentiated labelling (e.g. Ukraine) others might prefer the current rules (e.g. China).

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<sup>177</sup> Regulation (EC) No 1337/2013.

#### 10.4.4. Comparison of options

As regards the specific issue for honey as discussed in the Council and also raised in the public consultation, it essentially concerns the pros and cons that an adjustment to the way origin is labelled would have in terms of consequences for the economic and social sustainability of honey production and packing in the EU. The consumer information angle has been emphasised as important in this respect.

##### **Effectiveness**

All options would have the effect of improved consumer information, Options III and IV more than Options I and II. However, Option I would create less administrative burden to operators and would be coherent with the principle of the single market.

##### **Coherence**

In terms of coherence with the current FIC Regulation and its ongoing revision, all Options would neither overlap with it nor would they be incoherent with it. First, the FIC Regulation covers all products sold for consumer consumption and does not provide for specific rules regarding honey. All Options cover origin labelling of honey, none of the Options propose to derogate from the FIC Regulation.

##### **Efficiency**

A country-of-origin labelling of honey (option III) on packs would satisfy the respective consumer demand and would be in the economic interest of honey producers. Middle-ground solutions (option II) would try to strike a balance between the competing interests of producers and packers in the EU. Such solutions would introduce greater granularity to the labelling rules that currently apply to blends while stopping short of a full-fledged country-of-origin label requirement. For instance, instead of the current ‘blend of EU and non-EU honeys’, transnational geographical regions of the world could be used for honeys from non-EU countries. However the transnational geographic region might not always give the appropriate consumer information. For example honey from Turkey would not always come from Asia and honey from Ukraine and Moldova would be from Europe but not from EU. This option may also raise difficult questions of definition of a transnational geographic region. This discards option II.

The continued use of ‘EU’ for the parts of the blends that contain honey produced in the EU with a replacement of the term ‘non-EU’ with the non-EU countries of origin (option I) would be compatible with the idea underpinning the single market and the fact that EU honey complies with uniform high quality production methods regardless of the identity of the MS.<sup>178</sup> Although third countries producers and packers would benefit from the possibility to better differentiate and valorise their honey, this option may induce supplementary costs for third countries’ producers and packers.

Labelling the percentage shares of honeys (option IV) from individual countries would generate significant costs for packers. Honey blends that packers produce for a certain retail brand mostly consist of several batches. The percentage share of honeys from individual countries is characteristic for a single batch but can vary between batches.

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<sup>178</sup> See also in a related context : para 45 of ECJ, Case C-485/18, *Lactalis*, judgement of 1 October 2020, <https://curia.europa.eu/juris/liste.jsf?num=C-485/18>.

Sometimes the percentage for different countries might only change marginally. However, for each batch a different label would be necessary without that the product changes its characteristics. Changing labels for each batch would require interruption and adjustment of production processes (e.g. printing, gluing). It is doubtful, therefore, whether such a regime would be effective and efficient and discards option IV.

	Baseline	Option I	Option II	Option III	Option IV
Costs					
Compliance costs incurred by food business operators (direct)	0	++	+	-	--
Regulatory costs incurred by regulators (direct)	0	++	+	-	--
Negative effects on market functioning (market disruption for food business operators, reduced innovation, consumer confusion)	0	++	+	-	--
Benefits					
Economic opportunities for food business operators (direct)	0	0	0	+	--
Wider range of products/services (direct)	0	+	0	+	0
Improved welfare, health (indirect)	0	0	0	0	0

#### 10.4.5. Preferred option

Option III, consisting of introducing a requirement to indicate the individual countries of origin on blends, is therefore considered the preferred option. Compared to the status quo, this proposal would offer the exact identification of the countries of origin, thereby satisfying consumer demand.

#### 10.4.6. Monitoring and evaluation of impacts

The impact will be evaluated by monitoring the development of sales of honey with different origin indication. This information is not available on a routine basis. A representative market survey will be necessary. Ideally, the Commission will base such survey on information from the individual MSs.

### 10.5. Marketing standards for foie gras

#### 10.5.1. Problem definition

Force-feeding raises increasing concerns from an animal welfare perspective. The current EU marketing standard is perceived as legalising animal suffering. On the other hand the current standard ensures the quality of a product that is very much related to the cultural heritage in some MSs.



Poultry marketing standards contain as a quality criterion for a product using the sales designation 'foie gras' a minimum liver weight requirement for ducks of 300g and for geese of 400g. Normal liver weights are 50 g (duck) and 70g (goose). The different weights account for the differentiation of a fatty liver (foie gras) and a 'normal' one and is relevant for the product (Evaluation study 2019, pp. 168-169). Under the relevant marketing standard, the designation 'foie gras' must not be used for a product that derive from birds' livers below this weight.

The minimum weight can in practice only be achieved by force-feeding (in French 'gavage') the ducks or geese. Force-feeding means feeding the birds more than they would voluntarily eat. It involves forced daily feeding of controlled amounts of feed during the two last weeks of fattening of in total 15-16 weeks for ducks and 16-24 weeks for geese. Foie gras is in principle a seasonal product, traditionally consumed around end of year celebrations but is available all around the year.

The minimum liver weight aims to guarantee the quality of the final product in line with consumer expectations<sup>179</sup>. The public consultation (and more generally the discussion of force-feeding in public) has shown two opposed camps concerning the existing EU marketing standard for foie gras: the industry, in particular in France and the French government, and animal welfare NGOs as well as some other MSs. The industry insists that the EU marketing standard be kept and even extended to processed foie gras. The NGOs argue that the standard should be abolished because of animal welfare reasons. In view of the controversy surrounding force-feeding, which entails trading off very different but fundamental values when making a decision on a revision of the underlying marketing standard, this standard has been chosen for a more detailed impact assessment.

Foie gras production is not regulated in EU legislation relating to animal welfare. For the opponents of force-feeding, the minimum required liver weight in the marketing standard for poultry constitutes an EU rule that is conducive to animal suffering and should therefore be abolished.

Force-feeding is currently allowed in five MSs (FR, HU, BG, ES, BE). In total, these countries produced close to 20,000 tonnes of foie gras in 2020 (about 18,000 t from duck and 2000 from goose), representing about 90% of the world's production. (Production outside the EU mainly takes place in China that is also a big exporter). In terms of animal welfare, this corresponds to about 60 million ducks and 5 million goose that are force fed in the EU every year<sup>180</sup>. In terms of market value, the global consumption value of foie gras was just above EUR 1 billion in 2015, which means that with a share of 90% of the global market, the EU market for foie gras in 2015 was just under EUR 1 billion<sup>181</sup>. The EU exports about 2,000 tonnes per year (10% of its production) with an export value of EUR 50 million<sup>182</sup>. Main destinations are Japan, Israel, Hong Kong and Switzerland. Imports are marginal (about 40 tonnes per year from China).

France represents 75% of the EU's foie gras production, but its output fell 20% in 2021 (to 11,674 tonnes) due to persistent problems with the spread of avian influenza,

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<sup>179</sup> NormoFoie Study, INRA UMR GenPhySE, 2018.

<sup>180</sup> Information from EuroFoieGras and <https://www.poultryworld.net/poultry/other-species/production-of-foie-gras-falls-for-3rd-consecutive-year/>.

<sup>181</sup> <https://www.wicz.com/story/46400543/foie-gras-market-size-in-2022-with-cagr-of-increasing-demand-challenges-growth-strategies-top-companies-analysis-portfolio-swot-analysis-and-forecast>.

<sup>182</sup> COMEXT average 2019-2021.

amounting to a total decline of 30% since 2019. Only Hungary and France produce *goose foie gras*, Hungary being the world's first producer. From the 6,500 fattening farms in France 35% feed less than 100 animals. In Hungary, 90% of the foie gras production is coming from farms that raise between 50 and 100 geese by batch. The first trading MSs are Hungary and Bulgaria in intra-EU trade, with 36% and 27% of total EU-trade in foie gras, respectively, followed by France (18%) and Belgium (15%)<sup>183</sup>.

### 10.5.2. Options to achieve the objectives

#### Baseline

Maintain the minimum liver weight element of the marketing standard.

#### Policy options

Apart from the baseline three options are technically conceivable:

- I: Remove the minimum liver weight element of the marketing standard<sup>184</sup>.
- II: Maintain the minimum liver weight but introduce obligatory labelling as 'produced via force-feeding'; using the term foie gras for light livers (produced without force-feeding) would not be allowed, as it would not be consistent with the purpose of keeping the minimum weight as a marketing standard.

A third option of banning force-feeding in the EU has been discarded from the options assessed. While this option is regularly raised by stakeholders, a ban cannot be achieved by a change in marketing standards on its own. A ban would have to be introduced under the animal welfare legislation and would mean that the marketing standard for the minimum liver weight would have to be removed (as in option I).

A ban would also have broader implications (e.g. on national practices). Article 13 TFEU states that in formulating Union policies, the Union and MSs shall "pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage". The Council of Europe adopted in 1999, in the framework of the 'European Convention on the Protection of Animals kept for Farming Purposes', a recommendation stating that the production of foie gras shall be carried out only where it is current practice and then only in accordance with standards laid down in domestic law (Article 24)<sup>185</sup>. This concerned five MSs in which foie gras is produced. There are no EU harmonised rules regulating production standards for foie gras. Banning force-feeding would constitute a trade-off with MSs' sovereignty about their cultural heritage and go beyond the above-mentioned Convention. At the national level, there are examples in MSs for such prohibitions of the production method. This also invites the related question which is the appropriate reference framework for possible prohibitions,

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<sup>183</sup> Information from EuroFoieGras and <https://www.poultryworld.net/poultry/other-species/production-of-foie-gras-falls-for-3rd-consecutive-year/>.

<sup>184</sup> At the public consultation also the option of introducing a maximum liver weight was tabled and supported by animal welfare NGOs. This option was not further considered in this impact assessment because a maximum liver cannot be a quality criterion for foie gras because a fatty liver develops only above a certain minimum weight. The animal welfare concerns that the NGOs intended to address are fully covered by option I that would abolish the marketing standard completely.

<sup>185</sup> [https://web.archive.org/web/20090401220339/http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/biological\\_safety%2C\\_use\\_of\\_animals/farming/Rec%20Muscovy%20ducks%20E%201999.asp](https://web.archive.org/web/20090401220339/http://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety%2C_use_of_animals/farming/Rec%20Muscovy%20ducks%20E%201999.asp).

the EU or rather MSs; accordingly, economic and social sustainability considerations may give rise to different trade-offs. If the choice were to ban force-feeding at the EU level under the appropriate framework, the existing marketing standard would logically have to be adapted.

As regards sustainability, all alternatives have valid elements and an assessment depends on which sustainability dimension is prioritised. Maintaining the standard (baseline and option II) would be compatible with ensuring the economic sustainability of a traditional production system in certain MSs. Removing the standard (option I) would address social sustainability with a view to animal welfare concerns related to force-feeding. While it would not amount to a ban on force-feeding, the effect of the marketing standard would be lessened due to the premium prices that the use of the sales designation currently fetch.

### *10.5.3. Impacts of the different policy options*

#### **Likely economic impacts**

The baseline (status quo) or option II (status quo + labelling) would ensure business continuity for producers. The current minimum liver weight ensures that a product sold as foie gras respects the high quality standard. Marketing livers of lower weight (less fatty) as ‘foie gras’ is not possible under the current legal framework, and this would remain unchanged under option II. Such livers or related products are often marketed as ‘foie fin’, which is not a harmonised marketing standard. The standard allows for market segmentation and contributes to the creation of value for ‘foie gras’ as a quality-guaranteed premium product. During the public consultation, producers insisted that the marketing standard ought to be kept lest they face significant negative economic consequences. The available evidence tends to corroborate the importance of the standard for the livelihood of the producers of ducks and geese for foie gras: According to information from EuroFoieGras<sup>186</sup>, the sector’s European umbrella organisation, foie gras production represents 50,000 direct and 150,000 indirect jobs. The production is characterised by small family enterprises<sup>187</sup>.

Abolishing the standard (option I) risks having significant negative economic consequences for the current producers of foie gras. For one, they would not be able to rely on the standard in export markets in the EU to protect via labelling and exclusivity the original product from being undercut by different products being marketed under the same sales name that would not display the same quality characteristics nor entail the same production costs. It is debatable whether producers could maintain their legal protection in their own MS if the EU standard were abolished. The freedom of movement of goods (Article 34 TFEU) would speak in favour of an openness to competing products from abroad (single market). However, this freedom can be subject to certain exceptions where the protection of consumers is concerned (Article 36 TFEU and so called ‘mandatory requirements’ developed by the ECJ). Private labels would likely be used to enable consumers to recognise the original product. Further signalling effects would be due to the price points that would likely remain very different depending on the ability to differentiate oneself from the products in the absence of a right to exclusivity concerning the designation ‘foie gras’. Another avenue to distinguish oneself to a certain extent from other products would be the use of protected geographical indications or traditional

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<sup>186</sup> <https://www.eurofoiegras.com/en/>.

<sup>187</sup> <https://lefoiegras.fr/le-savoir-faire/liens-en-region>.

guaranteed specialities, where these avail. This would be possible for producers under both options I and II.

Under the baseline and option II, consumers of ‘foie gras’ can rely on the sales designation certifying the expected quality. Introducing a compulsory labelling about forced feeding (option II) could possibly lead to lower sales, if increased transparency about production methods fosters changes in consumption.

There are citizens who make a deliberate choice not to buy ‘foie gras’ because of animal welfare concerns. However, abolishing the marketing standard alone (option I) would not bring about this result with certainty.

Indeed, the absence of an EU standard would come with some uncertainty, depending on legal assumptions (e.g. national standards based on cultural traditions and regional heritage) and risks that cannot be assessed in this report. Even if the EU marketing standard would be removed, foie gras could still be produced. It can, therefore, not be excluded that abolishing the marketing standard (option I) would lessen consumer information about the quality of the product designated as ‘foie gras’. Such an effect would stand ill against the very rationale underpinning marketing standards.

### **Likely impact on SMEs and competitiveness**

The producers of foie gras are nearly exclusively SMEs. In case the minimum liver weight in the EU marketing standard was deleted (option I) and the foie gras was no longer linked to defined quality criteria, these traditional producers – if they continued to produce according to current standards at higher costs – would face competition from other producers at lower prices. On the other hand, also the producers of those products could be SMEs. And if foie gras production lost its challenged animal welfare connotation among certain consumer groups, demand might increase and thus benefit these producers.

### **Likely social impacts**

Animal welfare is a societal concern. Animal welfare NGOs have been campaigning for abolishing the minimum liver weight (option I) in the EU marketing standard for many years, based on a number of scientific studies<sup>188</sup>. Option II (keeping the minimum weight but labelling force-feeding) would still raise serious concerns from animal welfare groups because EU legislation would maintain a quality standard that can only be achieved via animal suffering. Even if the precise animal welfare aspects of foie gras production are debated among scientists<sup>189</sup>, it is clear that the practice forces birds – which are eventually slaughtered for human food purposes – to ingest feed above their natural needs. The process is stressful for the birds. The fatty liver, which develops due to force-feeding, is abnormal and pathological. The minimum liver weight has also been a subject of several questions from Members of the European Parliament to the Commission.

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<sup>188</sup> Rochlitz I & Broom DM (2017). The welfare of ducks during foie gras production, *Animal Welfare*, 26:2, 135-149, <https://doi.org/10.7120/09627286.26.2.135>; Guémené D, Guy G, Noirault J, Garreau-Mills M, Gouraud P & Faure JM (2001). Force-feeding procedure and physiological indicators of stress in male mule ducks, *British Poultry Science*, 42:5, 650-657, <https://doi.org/10.1080/00071660120088489>.

<sup>189</sup> Synthesis note by Guy G & Fernandez X, INRA, October 2013: ‘Impact of gavage on the welfare and state of play of the studies regarding alternatives to gavage’; Guémené D, Guy G, Mirabito L, Serviere J & Faure JM (2007). Bien-être et élevage des palmipèdes. INRAE (<https://productions-animales.org/article/view/3435>).

On the other hand, foie gras generates income in rural areas and is deemed a cultural heritage in some MSs. In France the Code Rural<sup>190</sup>, for example, states that foie gras is part of the cultural and gastronomic heritage protected in France, and defines foie gras as liver of a duck or a goose specially fattened by force-feeding<sup>191</sup>. The discontinuation of the EU marketing standard (option I) could however be seen by certain stakeholders as an interference in the national heritage.

### **Likely environmental impacts**

Compared to other poultry products, foie gras is produced with a relatively low feed conversion. To a certain extent, a discontinuation of force-feeding (e.g. under option I) would free feed resources (in particular maize) for other uses (with higher feed conversion). Or, in the absence of alternative uses, (intensive) maize production in some regions could decline together with production of foie gras. However, it is difficult to quantify these volumes and in any case they would be too small to imply any measurable environmental impact.

### **Likely impacts on simplification or administrative burden**

Removing the minimum liver weight from the marketing standard (option I) would eliminate a regulatory requirement. Control and enforcement would not be necessary anymore. However, controls on other aspects of the marketing standard would be maintained (such as ORTs, definition of cuts, water content, etc) so that the impact cannot be quantified. In any case the impact would only be relevant for the five MSs where foie gras production takes place.

### **Who would likely be affected**

Foie gras producers and processors would be the most affected by amending the current marketing standard (options I and II). Consumers could also be affected in as much as they rely on the current EU standard and could possibly be confused about the quality of the product designated as foie gras. Animal welfare NGOs have been campaigning for abolishing the marketing standard (option I) for years. Depending on the final option chosen, NGOs would see their campaign being successful or not and articulate this strongly.

#### *10.5.4. Comparison of options*

### **Effectiveness**

Option II would have the effect of improved consumer information. However, it can be assumed that consumers of foie gras are aware of the animal welfare concerns linked to the production method.

### **Coherence**

In terms of coherence with the Animal Welfare legislation and its current revision, all Options would neither overlap with nor would they be incoherent with it. In case foie gras production would be forbidden, the marketing standard would become redundant.

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<sup>190</sup> <https://agriculture.gouv.fr/le-foie-gras-de-la-fourche-la-fourchette>.

<sup>191</sup> [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000006584967/](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006584967/).

## Efficiency

Eliminating the minimum liver weight element from the EU marketing standard (option I) would likely entail animal welfare gains even if such a marketing standard would not constitute a prohibition to produce foie gras using force-feeding. The precise magnitude of these gains would depend on certain legal outcomes which are difficult to anticipate at the time of drafting this impact assessment. From today's vantage point, it is likely that the share of 'foie gras' from force-fed birds would diminish, especially on EU markets. The result in the producing MSs, which are of course also important 'consuming' MSs, is uncertain: it is well possible that domestic law that exist today would shield traditional producers from changing their production practice and, hence, from seeing the market share in their home markets affected.

Maintaining the EU standard (baseline and option II) would be compatible with the original rationale of the marketing standards policy which is to certify a certain product quality to the benefit of the consumers of the product. The producers concerned would not incur economic losses due to an opening of the sales designation to what they would view as non-compliant products.

	Baseline	Option I	Option II
Costs			
Compliance costs incurred by food business operators (direct)	0	0	-
Regulatory costs incurred by regulators (direct)	0	0	-
Negative effects on market functioning (market disruption for food business operators, reduced innovation, consumer confusion)	0	-	--
Benefits			
Economic opportunities for food business operators (direct)	0	+	0
Wider range of products/services (direct)	0	+	0
Improved welfare, health (indirect)	0	+	0

### 10.5.5. Preferred option

The political debate around force-feeding is still ongoing. In order not to pre-empt these ongoing discussions, the impact assessment does not identify at this stage a preferred option. It seems appropriate to remain open to discussing this issue further with the European Parliament and in the Council.

### 10.5.6. Monitoring and evaluation of impacts

Given that there is no preferred option in this case, a future monitoring and evaluation plan cannot be developed at this stage; this can only be done if there is a decision to revise the marketing standard.



# ANNEX 1: PROCEDURAL INFORMATION

## 1. LEAD DG, DECIDE PLANNING/CWP REFERENCES

### Lead DG

Directorate-General for Agriculture and Rural Development

### Decide planning

PLAN/2020/8824

## 2. ORGANISATION AND TIMING

### Timing

*Table 6 - Final timeline of the impact assessment process*

Publication of the inception impact assessment	19 January 2021
Publication of the consultation strategy	29 March 2021
Start of the public consultation	8 June 2021
JRC workshop	9 September 2021
Targeted consultation of MSs	17 September 2021
Publication of the JRC literature review	17 December 2021
Publication of the JRC workshop report	19 January 2022
Submission of the draft impact assessment to the RSB	7 February 2022
Opinion of the RSB	4 March 2022
Submission of the revised draft impact assessment to the RSB	22 July 2022
Opinion of the RSB	21 September 2022

### Interservice Group

At the beginning of the impact assessment process, the following Services were invited to nominate an official to participate in the interservice group: SG, SJ, CLIMA, COMP, ENV, GROW, JRC, JUST, MARE, RTD, SANTE, TRADE. During the process, also officials from DIGIT and CNECT were added to the group to help cover the digitisation dimension. There were four meetings of the group, on 29 September 2020, 18 February 2021, 1 December 2021, and 26 January 2022. A last meeting of the Group was held on 27 January 2023, before the launch of the inter-service consultation of the impact assessment. During this same meeting, the Group also discussed the legislative proposals. These meetings were complemented by electronic consultations with the ISG on the JRC workshop in May 2021, on the consultation of the MSs (Annex 2) in September 2021 and on the revised impact assessment report in June 2022. For additional transparency and collaborative work, ISG members had access to a dedicated group on Teams where drafts and other relevant resources were accessible and shared in a timely manner.



### 3. CONSULTATION OF THE RSB

Table 7 - Changes compared to the earlier draft

The Board's recommendation on what to improve	How the IA report has been modified
<p>(1) The report should clarify how coherence with the upcoming revision of the Regulation on food information to consumers will be ensured. It should outline where exactly where these overlaps will occur and what the solution is to avoid duplication of costs and incoherence between different pieces of legislation. Clarification of these issues is particularly important for the marketing standards related to origin labelling (honey, pulses and egg marking) and sugar content (jams, fruit juices and nectars). Specific initiatives directly relevant for marketing standards are listed in the report, but the relevance and overlap with marketing standards should be set out explicitly.</p>	<p>Clarification on the coherence with the upcoming revision of the Regulation on food information to consumers was added in the relevant parts of the impact assessment.</p>
<p>(2) The report should establish a clear relationship between all the marketing standards listed in the annex of the report and those that are subject to revision and discussed in the report. It should clarify why no new standards are put forward (except for cider and perry) and explain if there is any scope for new marketing standards (e.g. for the quality of olive oil).</p>	<p>At the beginning of Section 10, it was clarified that the criterion to distinguish between marketing standards that are examined in Section 10 and those that are included in Annex 9 depends on the expected magnitude of the modification's impact. Rationale on the absence of initiative with respect to the quality of olive oil was added, see footnotes 286 and 288.</p>
<p>(3) The rationale for the selection of the five standards for a more in-depth assessment should be elaborated further in the problem definition. The report should also clarify why sensitive topics such as the sales description of plant-based preparations and the water content in poultry are not assessed in depth, given that political sensitivity is one of the criteria for carrying out an in-depth assessment. The report should provide convincing arguments that the introduction of new standards and the changes to the existing standards not selected for in-depth assessments will not result in significant impacts. It should take into account that although some impacts may be small in absolute terms, they may be particularly significant for some groups of stakeholders.</p>	<p>A list of criteria justifying whether an in-depth assessment was needed was added in the introduction to Section 10 (see above). Additional explanations as regards the ability for the Commission to choose among policy alternatives were added in relevant parts of Annex 9.</p>
<p>(4) The report should spell out more clearly how all these initiatives, in particular those assessed in more depth, are consistent with the objectives set out in the European Climate Law and Sustainable Development Goals</p>	<p>Additional references to the European Climate Law and Sustainable Development Goals were added in Annex 6.</p>
<p>(5) The report should strengthen the impact analyses and comparisons of options in the in-depth assessments. The cost calculations to estimate the administrative burden of the marketing standards assessed in depth should be detailed to allow the reader to follow the calculation method. Only costs and savings for businesses and citizens should be counted for the One In, One Out purposes. The report should more systematically compare the options for each assessed standard in terms of effectiveness, efficiency and coherence. In cases where there is no preferred option (the foie gras</p>	<p>The comparison of options was strengthened in relevant parts of Section 10. Some of the explanations in Annex 4 were replicated in Annex 3. The last row referring to authorities under the One In, One Out approach of the Table 9 in Annex 3 (overview of benefits) was deleted. The direct adjustment costs in Table 10 of Annex 3 (Costs related to the one in one out approach) were deleted. In Section 10, the sections on juices, jam, honey and foie gras were updated and now address more explicitly the effectiveness, efficiency and coherence of the options. Point 5 under Section 10 (foie gras)</p>

The Board's recommendation on what to improve	How the IA report has been modified
standards), it should present clearly the available choice in terms of differences in costs and benefits.	was expanded.
(6) The report should be clearer on the envisaged monitoring arrangements to overcome the identified data and evidence challenges and specify when an evaluation will be carried out.	The Commission will make use of existing channels to monitor the implementation and collect information and data of the functioning of marketing standards in the market. This includes tabling a regular dedicated discussion on the standards in the Expert Group on the Common Organisation of the Market in agricultural products, which meets several times per year, with delegates from MS authorities, as well as in the Civil Dialogue Group with relevant stakeholders.
(7) The report should follow more closely the format of the impact assessment report (Tool 11 of the Better Regulation Toolbox), including by integrating the key insights of the individual assessments in the main sections of the report.	Table 3, Table 4 and Table 5 were added in Section 7 as regards effectiveness, efficiency and coherence of the initiatives.

#### 4. EVIDENCE, SOURCES AND QUALITY

##### Evidence

The evidence used in this impact assessment draws above all on:

- EC (2019). Evaluation of marketing standards [Regulation (EU) No 1308/2013]. *Have Your Say*. Brussels: European Commission. <https://europa.eu/!JKhyqb>
- Areté et al. (2020). *Evaluation of marketing standards contained in the CMO Regulation, the 'Breakfast Directives' and CMO secondary legislation*. Brussels: European Commission. <https://doi.org/10.2762/475831>
- EC (2020). Evaluation of marketing standards. *Commission Staff Working Document SWD/2020/0230*. <https://europa.eu/!RU43Ky>
- Deré, M. (2019). The possibility of new marketing standards for agricultural products. *Library and e-Resources reading suggestions*. Brussels: European Commission; plus ad hoc desktop research by DG AGRI.
- EC (2021). Agricultural products – revision of EU marketing standards, Feedback and statistics. *Have Your Say*. Brussels: European Commission. <https://europa.eu/!uJqxdD>
- EC (2021). Agricultural products – revision of EU marketing standards, Public consultation. *Have Your Say*. Brussels. European Commission. <https://europa.eu/!VUQcBu>; incl. submitted position papers
- Nes, K., Ciaian, P. (2021). Marketing standards: A review of the literature. *JRC Technical Report*. Luxembourg: European Union. <https://doi.org/10.2760/991707>
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- In-house expertise of the Commission services

## **External expertise**

The external expertise used in this impact assessment comes above all from the consultation processes and the contributions facilitated by the JRC:

- Stakeholders via the public consultations (EC 2019, EC 2021)
- Member States via the targeted consultation (Annex 2)
- Stakeholders and experts via technical workshops, civil dialogue groups and targeted consultation (Annex 2)
- Technical experts via the JRC workshop (Russo et al. 2022)
- Academic state-of-the-art via the JRC literature review (Nes & Ciaian, 2022)
- Contractors via their reports (Areté et al. 2020, ECORYS & WUR 2022)

## **ANNEX 2: STAKEHOLDER CONSULTATION (SYNOPSIS REPORT)**

### **1. CONSULTATION STRATEGY**

The consultation invited relevant stakeholders and the public at large to provide feedback on possible policy options for a revision of EU marketing standards for agricultural products, and on their likely impacts. Its objectives were in particular to (i) obtain views on shortfalls of the current marketing standards framework, and (ii) receive feedback on the range of possible policy options. Given that stakeholders had already been consulted for the recent more general evaluation of marketing standards, the consultation addressed more particularly the potential of marketing standards to increase the supply of sustainable products and to simplify current legislation.

### **Mapping of stakeholders**

Marketing standards regulate the sales of agricultural products to consumers. As such, they affect operators along the whole respective supply chains, including consumers, as well as all those with an interest in food and how it is produced, or those interested in human nutrition. Given possible substitution effects between different agri-food products, also operators in supply chains of products that are not covered by marketing standards may have an interest in the revision. As marketing standards are enforced and controlled at the national level, MSs' competent authorities are likewise concerned by any revision of the standards. This means the following stakeholders were identified in particular: operators in the targeted supply chains and their associations; consumers and consumer groups; operators in the supply chains in other sectors, private certification bodies and sustainability initiatives; civil society organisations; MSs' ministries and customs and control authorities; international organisations and third countries; and the scientific community and policy support bodies.

### **Consultation method and communication activities**

The consultation featured the following components:

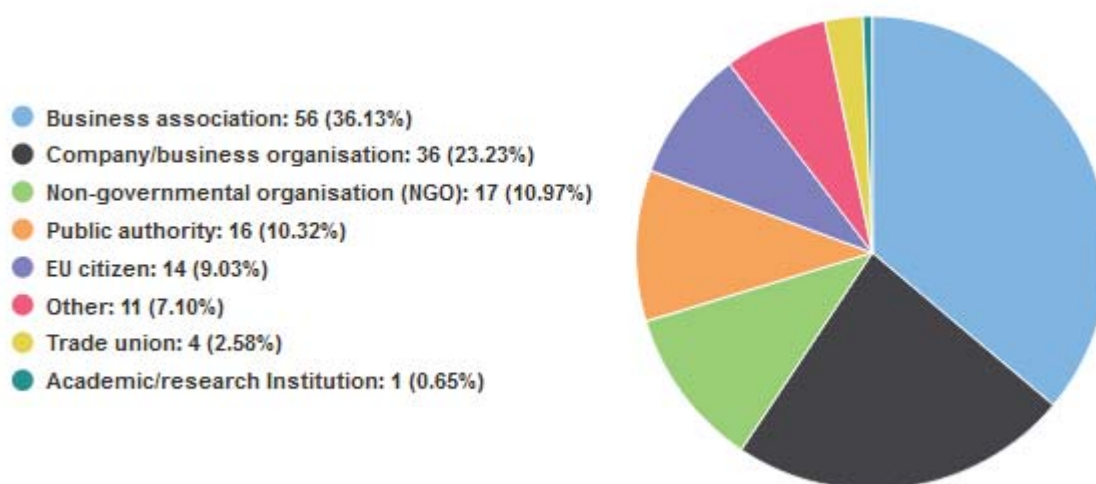
- Publication of the roadmap to gather first reactions by stakeholders and citizens.
- Public consultation; publication of the results on the consultation website.

- Technical workshop with selected experts from the food supply chain, consumer groups, NGOs, and academia, in collaboration with the JRC; publication of the outcomes of the workshop in a technical report.
- Written consultations of MSs' authorities.
- Discussions with MSs representatives in Commission expert groups and with representatives of stakeholders and NGOs in civil dialogue groups.
- Complementary consultations of and bilateral exchanges with key stakeholders via email and ad hoc video meetings.

## 2. ROADMAP

Stakeholders and citizens could provide their feedback on the roadmap from 19 January until 16 February 2021<sup>192</sup>. In total, the Commission received 156 instances of feedback; most came from business associations (56), companies/business organisations (36), non-governmental organisations (17), public authorities (16), and EU citizens (14) (Figure 2).

*Figure 2 - Responses to the inception impact assessment by categories of respondents*



Only three instances of feedback were received from countries outside the EU (one each from the UK, Nepal, and Georgia), while most from within the EU came from Germany (58), and Spain (26) and Belgium (26). The sectors most commonly commented on were poultry & eggs and F&V (Figure 3), with the various responses striking a balance between feedback demanding more or stricter EU marketing standards, feedback demanding a reduced scope, and feedback expressing contentment or demanding a more case-by-case revision of individual standards.

<sup>192</sup> <https://europa.eu/!fpU7dy>



Figure 4: Types of respondents

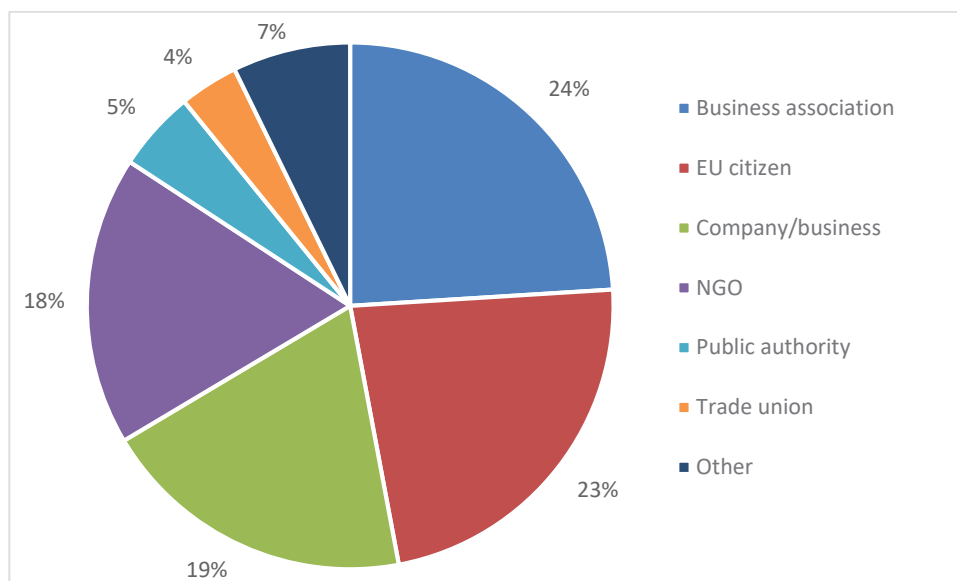
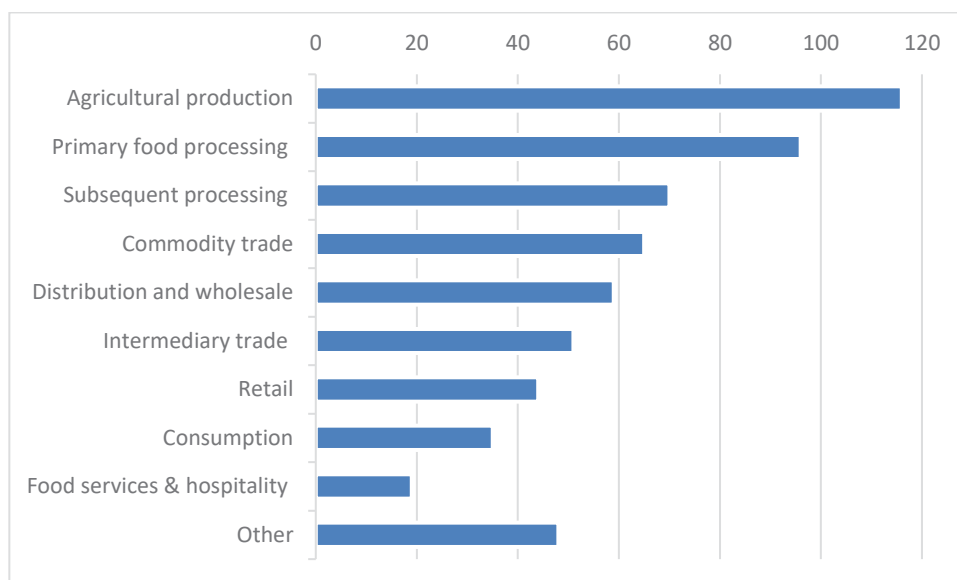


Figure 5: Stage in the food supply chain that respondents represent



## Overview of results

### Familiarity with and relevance of marketing standards

Most respondents stated that they were familiar with the standards for poultrymeat, eggs, milk and dairy, beef and veal, and F&V (Figure 6). The existing or possible EU marketing standards on which most respondents provided feedback were those for poultrymeat, followed by eggs, F&V, other meats, and plant-based protein (Figure 7). An overwhelming majority of respondents (83%) affirmed that a revision of EU marketing standards for agricultural products would likely affect them.

Figure 6: Familiarity with sectoral standards

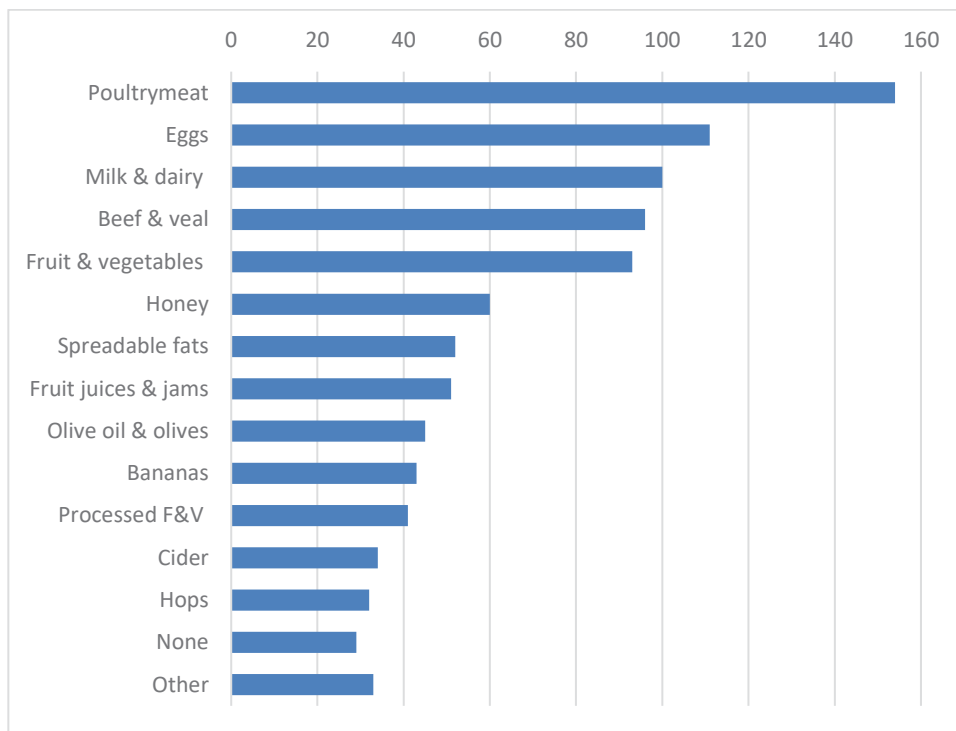
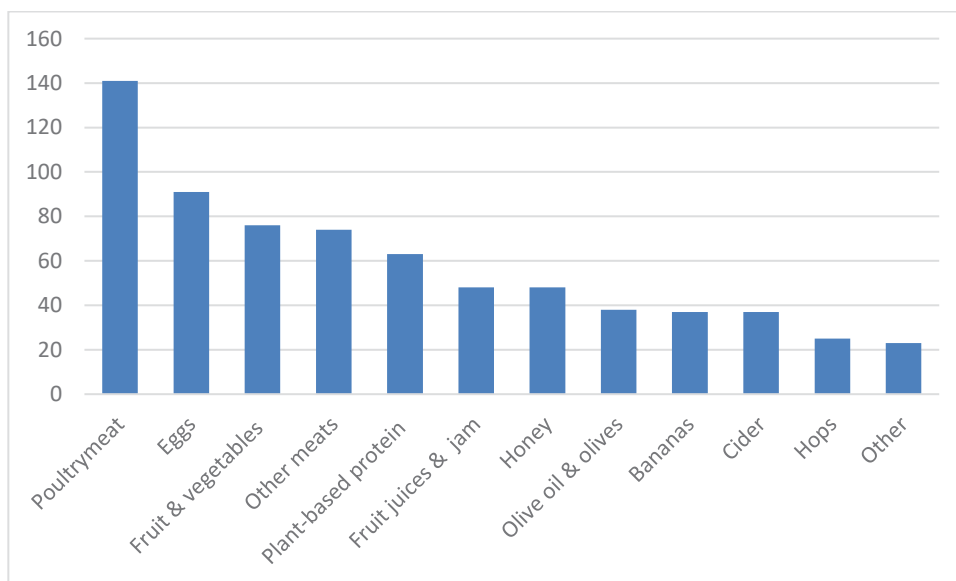
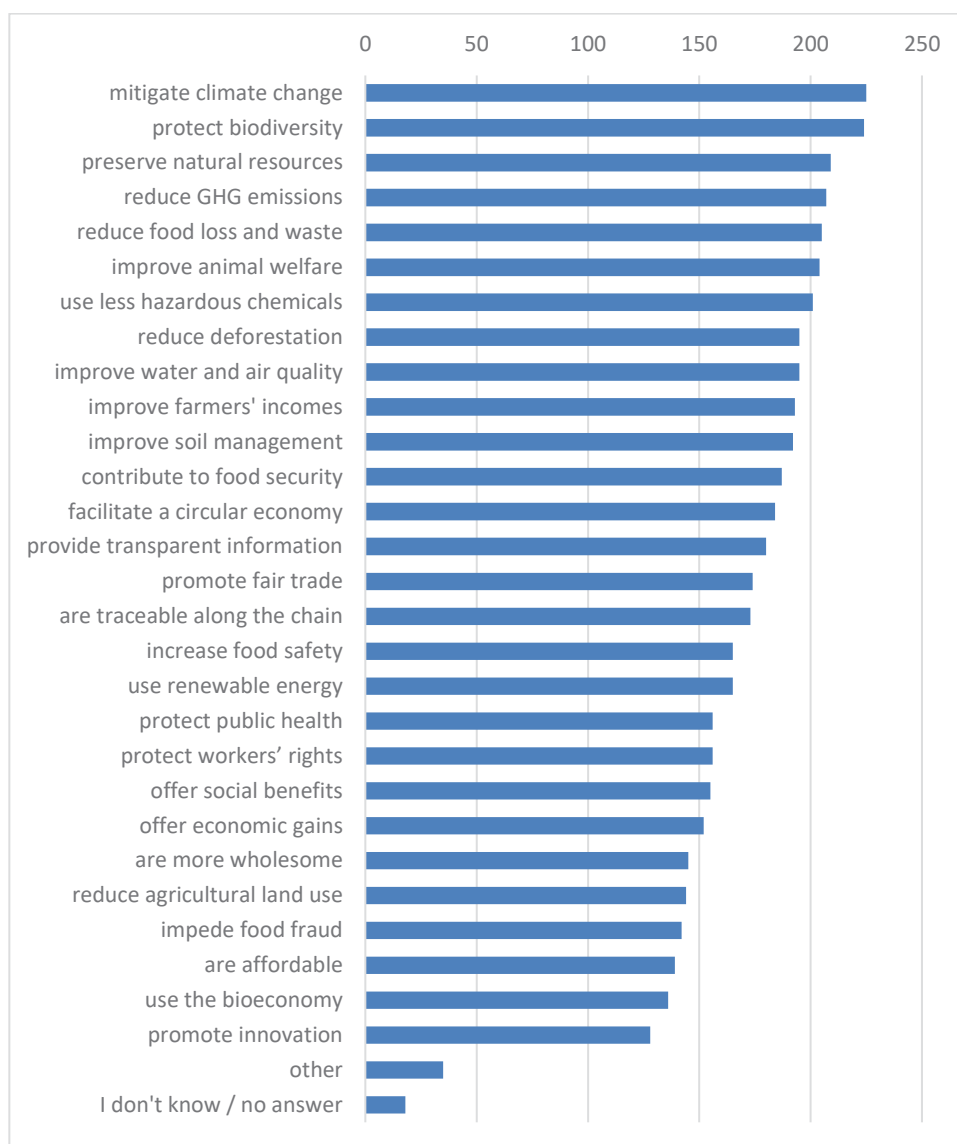


Figure 7: Provision of feedback on sectoral standards



## Respondents' views on sustainability and marketing standards

Figure 8: Sustainable agricultural products should do the following...



Of a list of possible environmental, social and economic criteria that could characterise 'sustainable' food, all were chosen by a large number of respondents (Figure 8).

The standards most respondents from organisations or operators dealt with were in the fields of animal welfare, traceability, climate change, and food safety (Figure 9). Most of the sustainability-related standards these respondents dealt with were EU marketing standards or standards of MSs or their regions (Figure 10).



Figure 9: Organisations or operators (excl. citizens) deal with standards covering...

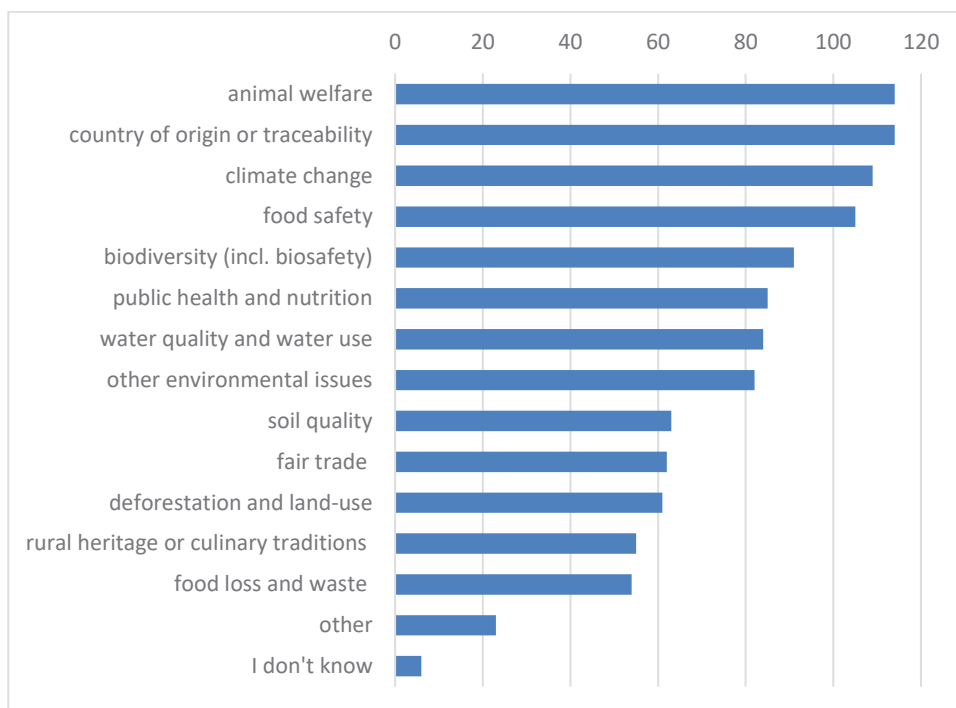
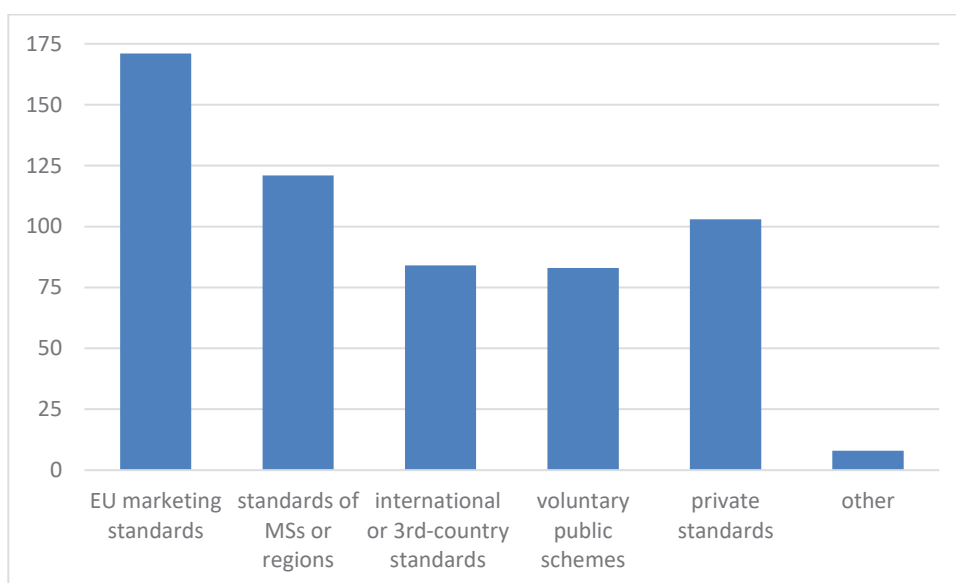


Figure 10: Stakeholders deal with sustainability-related requirements from...



Among responding citizens, most buy agri-food products that they think are more sustainable than alternative products, some also if they are more expensive (Figure 11). When shopping for food, those citizens mostly buy products they think perform better regarding traceability and origin, rural heritage or culinary tradition, fair trade, climate change, animal welfare, and biodiversity (Figure 12).

Figure 11: Citizens buy food products they think are more sustainable...

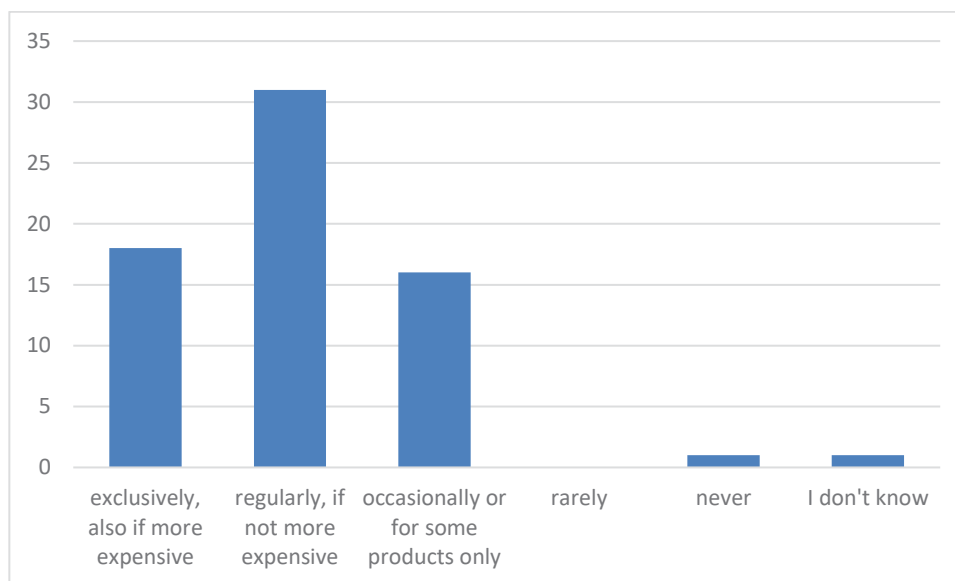
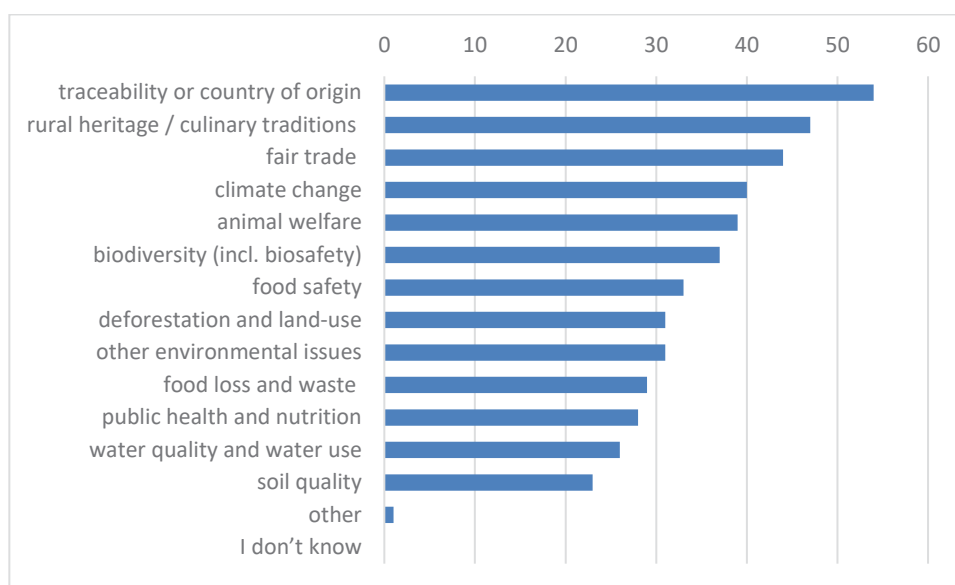


Figure 12: Citizens buy food products they think perform better regarding...



### Respondents' views on the role of EU marketing standards for agricultural products

For the revision of EU marketing standards for agricultural products, most respondents strongly agreed or agreed that ORTs can be useful for providing more sustainable agricultural products (Figure 13). To take into account evolving consumer preferences, technological change and new production methods, respondents thought that changes of EU marketing standards are desirable in the following sectors (in terms of excess 'yes' over 'no'): poultrymeat, eggs, and other meats, and plant-based protein products, followed by F&V and honey (Figure 14).

Regarding the current EU marketing standards for agricultural products, most respondents stated that they affect them or their organisation either very positively or positively. A large number was neutral, did not know or did not answer (Figure 15). A revision of the standards to enhance the uptake and supply of sustainable agricultural products or to take into account evolving consumer preferences, technological change

and new production methods was considered by a majority of respondents to affect themselves or their organisation either very positively or positively, with again, a large part of respondents being either neutral or not knowing or answering (Figure 16).

Figure 13: ORTs can be useful for providing more sustainable agricultural products

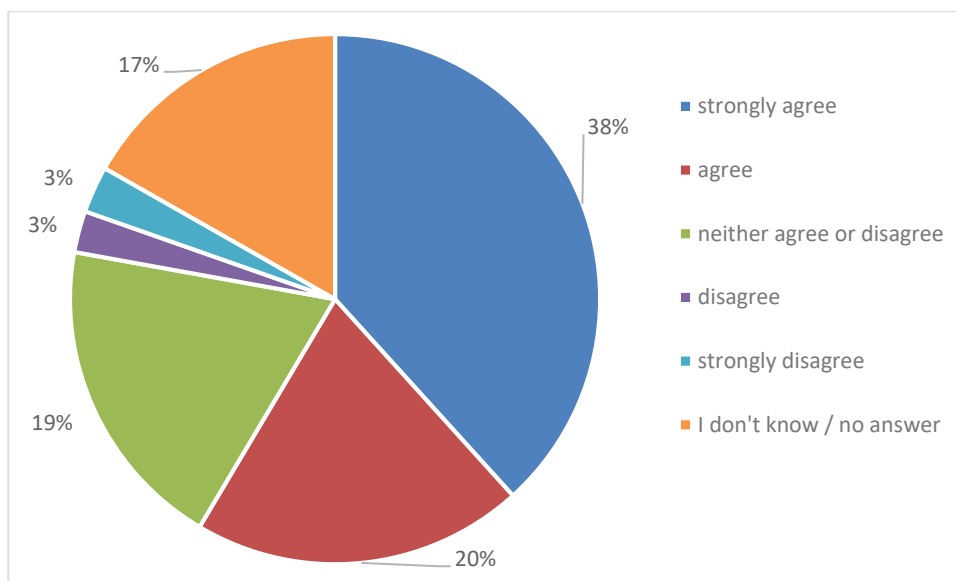


Figure 14: New preferences, technologies and methods require changes for...

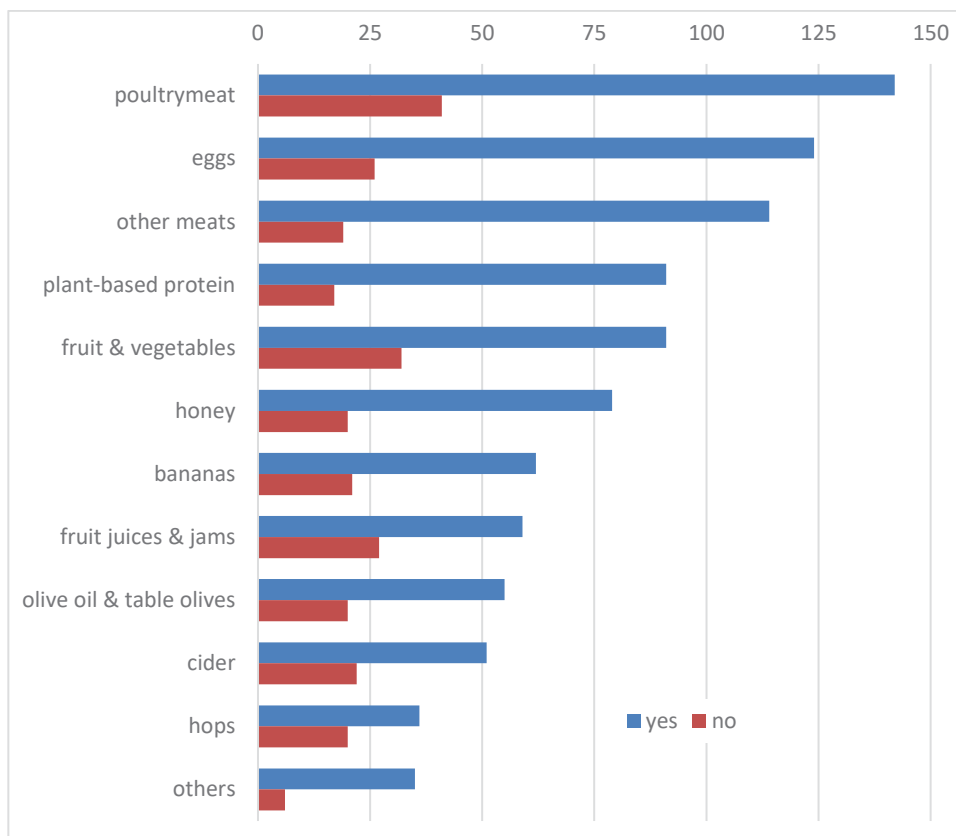


Figure 15: Current EU marketing standards affect me or my organisation...

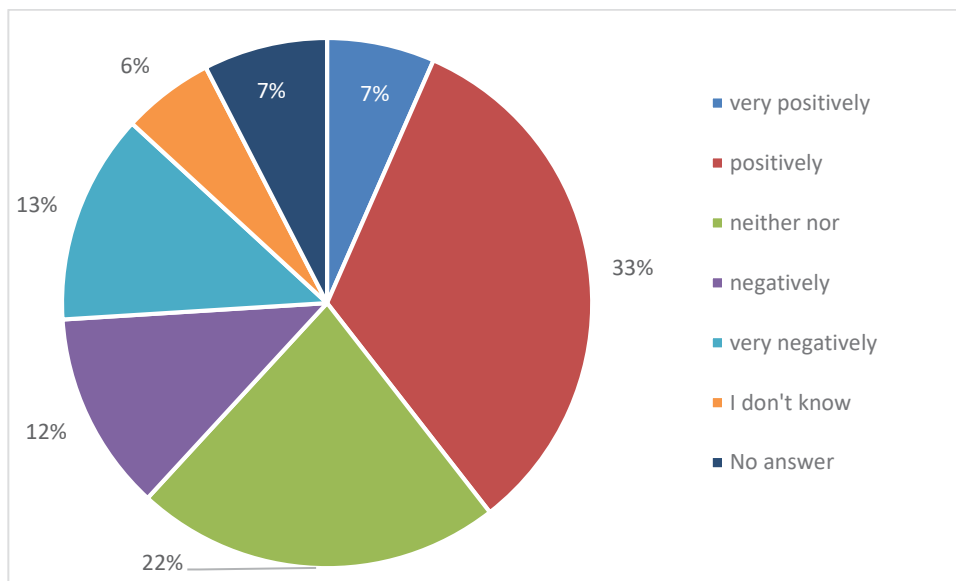
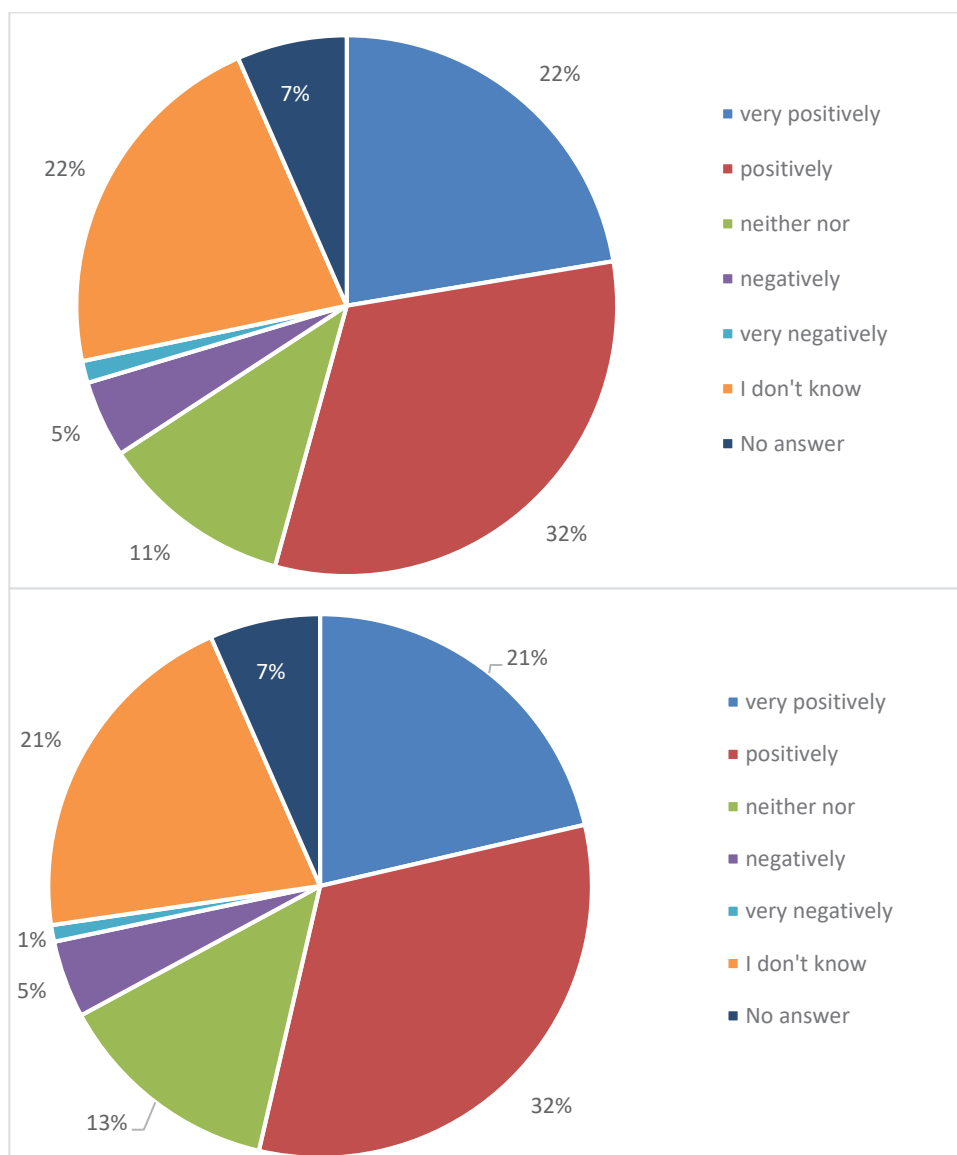


Figure 16: Revisions likely affect me or my organisation...

(revisions for sustainability (top) and for evolving consumer preferences, technological change and new production methods (bottom))



Most respondents thought that a range of environmental, social and economic aspects could be addressed through a revision of EU marketing standards, at least as a possibility: in particular environment, climate change, biodiversity, food loss & waste, animal welfare, food security, health & nutrition, and food fraud. At the same time, a significant minority thought that sustainability considerations should not be covered by marketing standards but by dedicated instruments, while many respondents were indifferent, did not know or did not answer (Figure 17).

Most respondents also thought that without a revision, the uptake and supply of sustainable agricultural products would most likely not happen or happen slower or to a limited extent (Figure 18). Most respondents also thought that the uptake and supply of sustainable agricultural products though marketing standards can best be done at the EU level (Figure 19). Similarly, most respondents thought that the uptake and supply of sustainable agricultural products can best be achieved through compulsory legislation or compulsory legislation in combination with other measures, while only a minority

thought that this can be achieved better using improved consumer information, official guidelines, self-regulation by operators, or other measures (Figure 20).

Figure 17: Revising EU marketing standards could be used to address

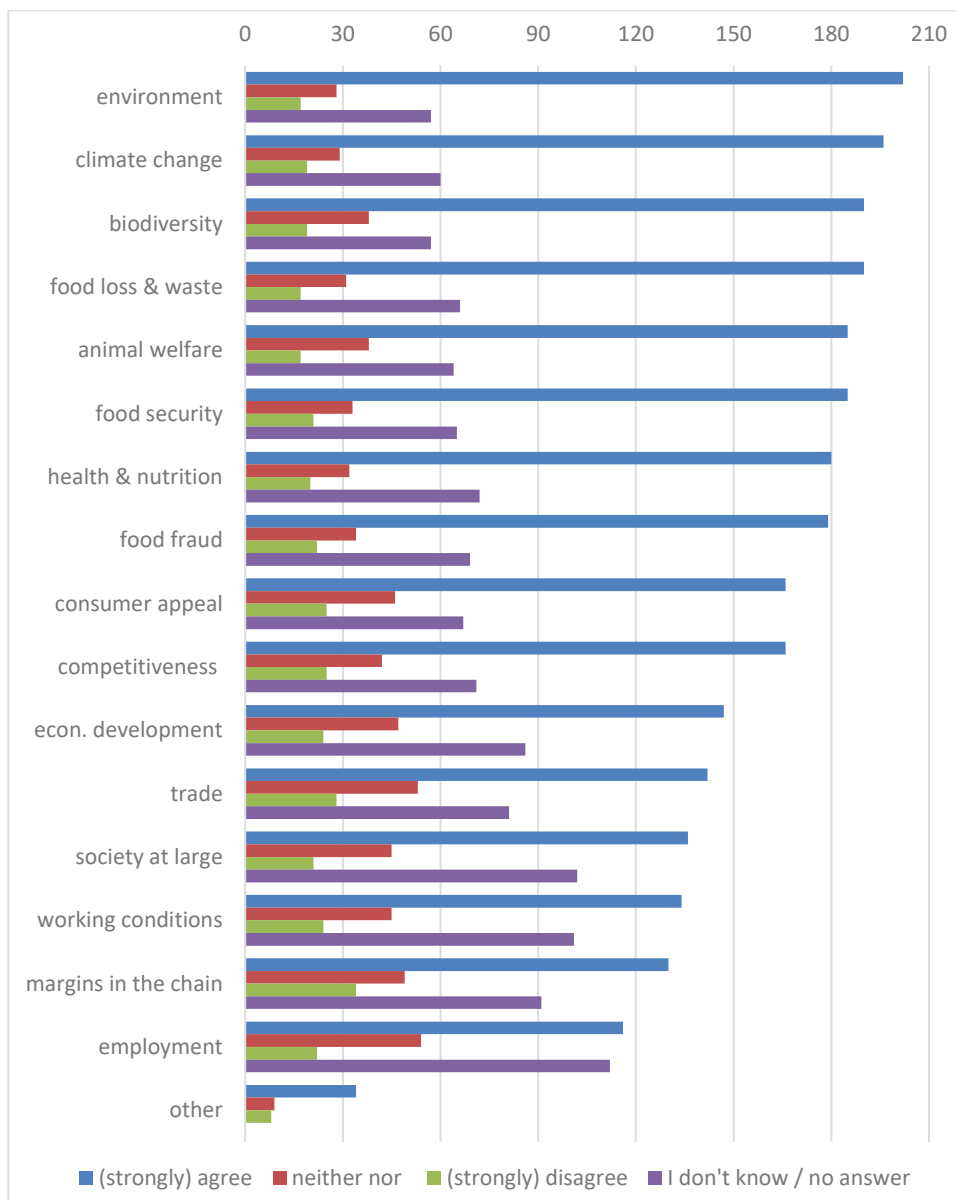


Figure 18: Without a revision, the uptake and supply of sustainable products most likely...

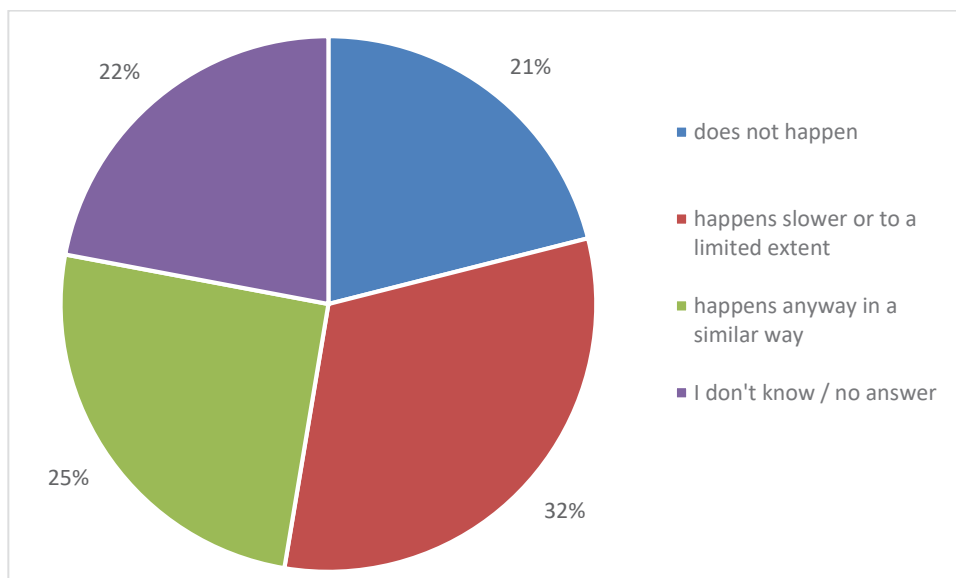


Figure 19: More sustainable agricultural products via standards can best be achieved...

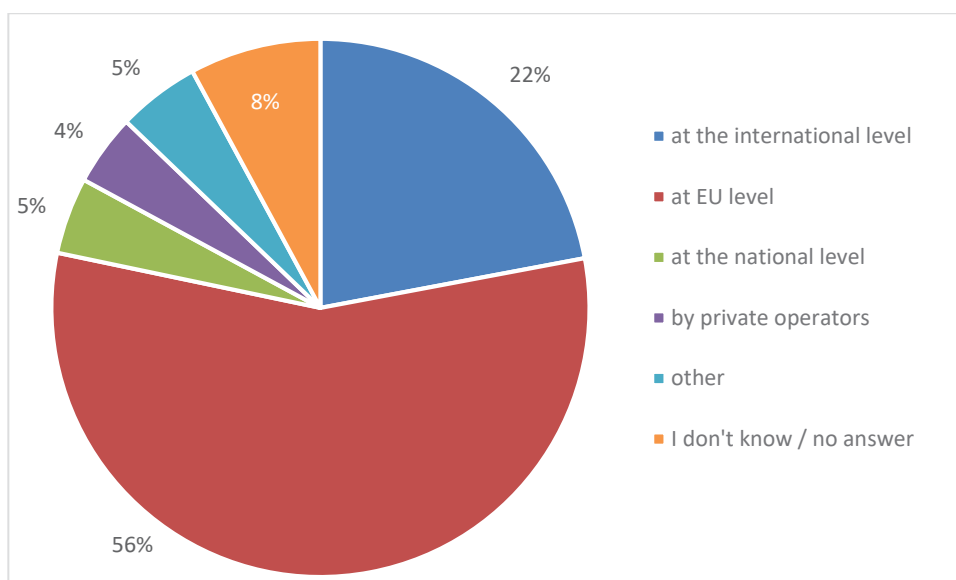
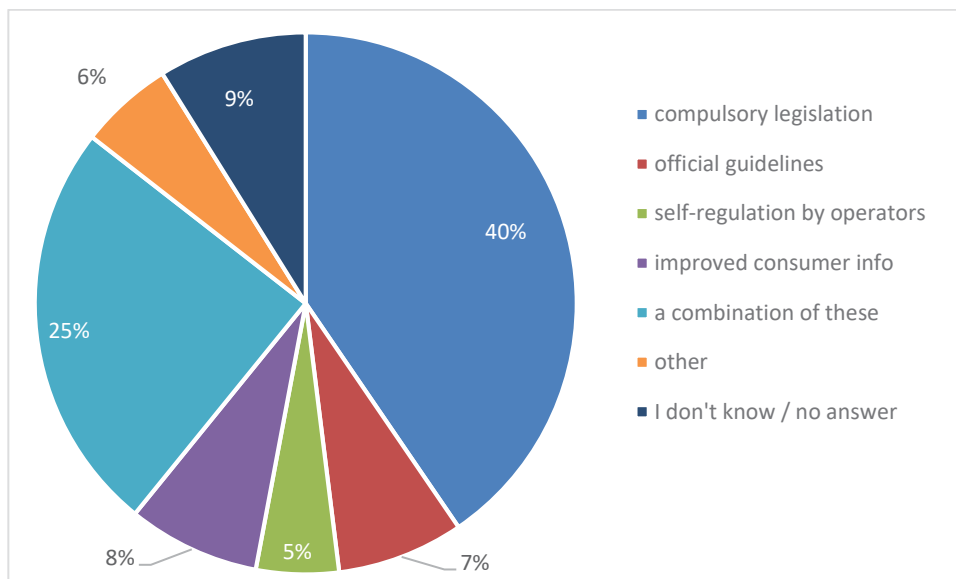


Figure 20: More sustainable agricultural products can best be achieved through...



Most respondents thought that agricultural producers and consumers would benefit most from a revision, followed by retailers and primary food processors (Figure 21). A majority of respondents also believed that large enterprises would benefit most from a revision, followed by medium-sized ones, small enterprises, and micro enterprises or the self-employed (Figure 22).

Figure 21: EU marketing standards for agricultural products benefit mostly

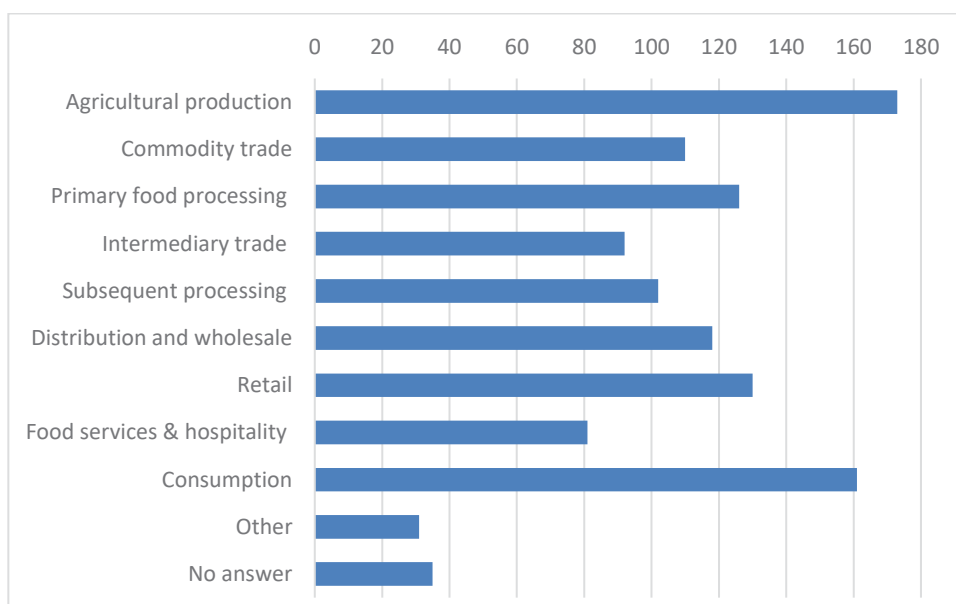
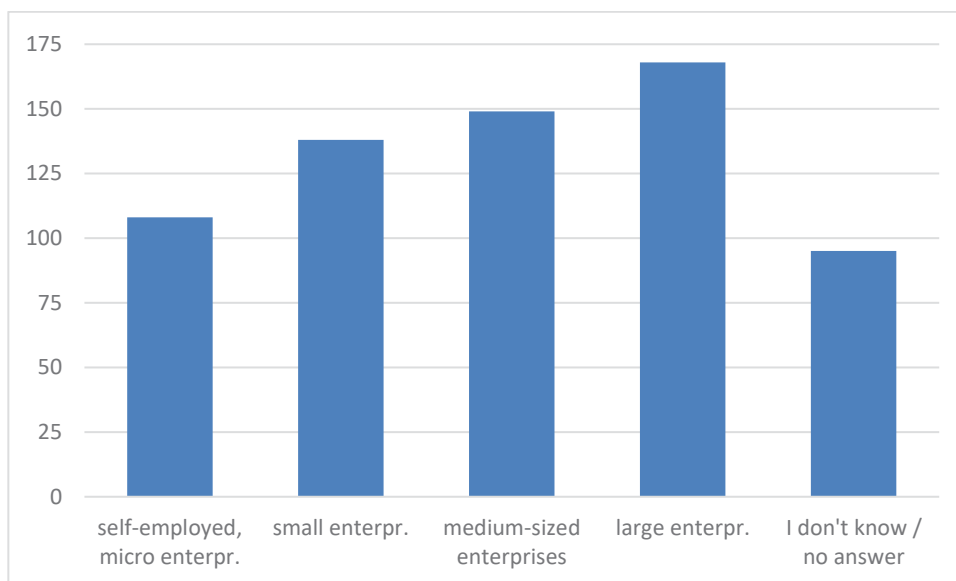


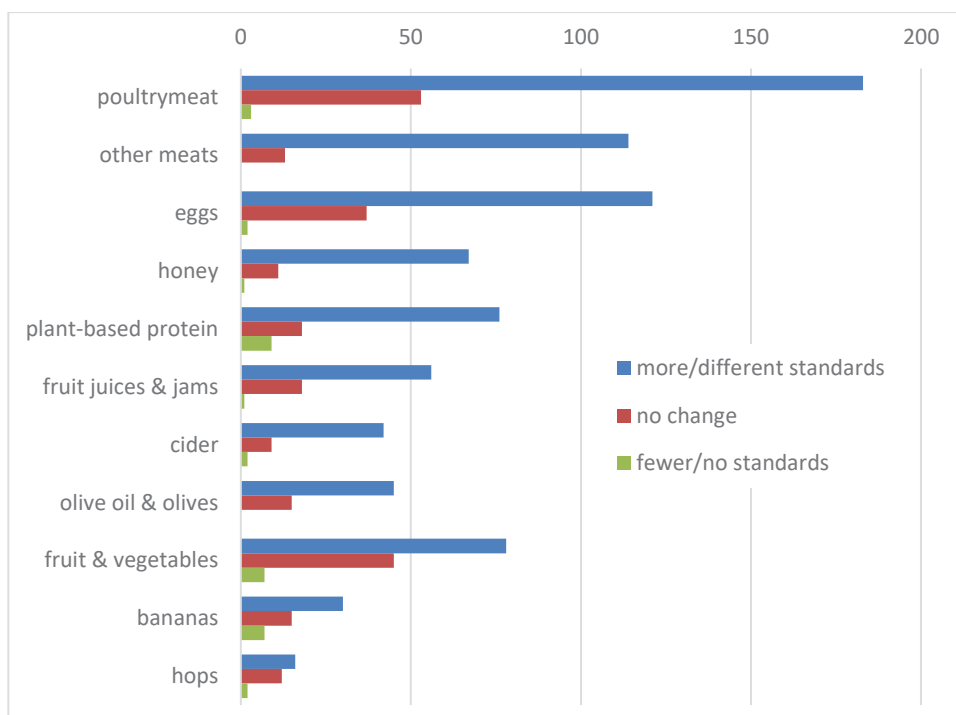


Figure 22: EU marketing standards for agricultural products benefit mostly



Regarding the products where action is needed on marketing standards to ensure the uptake and supply of sustainable agricultural products – and keeping in mind the size of the respective sectors – most respondents believed that this is the case for poultrymeat, other meats, eggs, honey, and plant-based protein products (Figure 23). When it comes to an economic assessment of revising EU marketing standards in line with their expectations, respondents generally expected that benefits outweighed related costs – even if hardly any respondent could provide concrete estimates (Figure 24).

Figure 23: For more sustainable agricultural products, action is needed on...





covered more sector- and product-specific questions regarding the uptake and supply of sustainable agricultural products, the results of which are reported in Table 8.

*Table 8 - Sector- and product-specific questions of the public consultation<sup>195</sup>*

<b>Which action is needed on ORTs for fruit and vegetables (except bananas)?</b>	
No change	23
Addition (more)	19
Revision (different)	18
Reduction (fewer)	1
Elimination (none)	3
No answer	240
<b>Which action is needed on obligatory rules for fruit and vegetables (except bananas)?</b>	
No change	22
Addition (more)	18
Revision (different)	23
Reduction (fewer)	2
Elimination (none)	1
No answer	238
<b>Currently, there are no explicit rules covering mixes of uncut and pre-cut F&amp;V</b>	
The current rules are clear and should not be changed	20
The rules should be clarified when it comes to mixes of uncut and pre-cut products, but pre-cut products should continue to be exempt from conforming to the marketing standards	17
The rules should be clarified when it comes to mixes of uncut and pre-cut products, and pre-cut products should conform to the standards, except that they are not 'intact'	12
I don't know	14
Other	11
No answer	234
<b>Which action is needed on ORTs for bananas?</b>	
No change	8
Addition (more)	8
Revision (different)	5
Reduction (fewer)	2
Elimination (none)	2
No answer	279
<b>Which action is needed on obligatory rules for bananas?</b>	
No change	7
Addition (more)	7
Revision (different)	10
Reduction (fewer)	3
Elimination (none)	0

<sup>195</sup> The questionnaire to stakeholders in the public consultation covered a larger range of sectors than what is covered in this impact assessment. For the sectors not covered in the impact assessment, the analysis concluded that no revision would be pursued at this stage, either because no changes were considered necessary or because the reflection is not yet mature at this stage.

No answer	277
<b>How should the import of bananas be regulated in EU marketing standards?</b>	
The restriction to import only unripe (green) bananas should be kept	8
The import of ripened bananas should be allowed and encouraged via labelling	3
The import of ripened bananas should be allowed only if accompanied by a certificate on their ripening conditions	6
The import of ripened (yellow) bananas should be allowed without limitations.	5
I don't know	5
Other	5
No answer	272
<b>Which action is needed on ORTs for fruit juices and fruit jam?</b>	
No change	10
Addition (more)	17
Revision (different)	9
Reduction (fewer)	0
Elimination (none)	1
No answer	267
<b>Which action is needed on obligatory rules for fruit juices and fruit jam?</b>	
No change	8
Addition (more)	14
Revision (different)	16
Reduction (fewer)	0
Elimination (none)	0
No answer	266
<b>How should the labelling of juice with reduced sugar content be regulated?</b>	
The current ban on reducing the sugar content in juice should be maintained	5
Juice should be allowed to have a reduced sugar content (any label indicating the reduced sugar content would have to be in line with applicable rules for such claims)	13
I don't know	10
Other	10
No answer	266
<b>How should the minimum sugar content in jams be regulated in EU marketing standards?</b>	
The current minimum sugar content for jams should be kept	8
The current minimum sugar content for jams should be reduced	1
The minimum sugar content for jams should be reduced as long as this does not result in a significantly shorter shelf-life of the jams	6
The minimum sugar content for jams should be removed but the relative sugar content has to be indicated	7
The minimum sugar content for jams should be removed	3
I don't know	10
Other	2
No answer	267
<b>Currently a product cannot be marketed as 'marmalade' if it is not made from citrus fruit</b>	
The definition of marmalade being made from citrus fruit should continue to apply	18
EU marketing standards should not define 'marmalade'; this definition could be determined at national level	4

EU marketing standards should allow marketing a product as ‘marmalade’ if it is made from other fruit than citrus fruit	8
I don’t know	6
Other	2
No answer	266
<b>Which action is needed on ORTs for cider?</b>	
No change	3
Addition (more)	18
Revision (different)	5
Reduction (fewer)	0
Elimination (none)	1
No answer	277
<b>Which action is needed on obligatory rules for cider?</b>	
No change	6
Addition (more)	13
Revision (different)	6
Reduction (fewer)	0
Elimination (none)	1
No answer	278
<b>Currently there is no EU marketing standard for cider</b>	
There should continue to be no EU marketing standard for cider	5
To help clarify the ingredients and production methods used, ORTs should be introduced	11
EU marketing standards should regulate the juice, sugar and alcohol content in cider	5
EU marketing standards should be introduced to regulate all relevant aspects of the product	7
I don’t know	3
Other	2
No answer	271
<b>Which action is needed on ORTs for eggs?</b>	
No change	24
Addition (more)	40
Revision (different)	15
Reduction (fewer)	1
Elimination (none)	0
No answer	224
<b>Which action is needed on obligatory rules for eggs?</b>	
No change	13
Addition (more)	39
Revision (different)	27
Reduction (fewer)	1
Elimination (none)	0
No answer	224
<b>Currently, innovations like solar panels in free range areas for laying hens are not allowed</b>	
The current restrictions on the use of free range areas should be kept	14
There should be more flexibility on using free range areas for laying hens if the new use contributes to sustainability and does not harm animal welfare	55
There should be more flexibility on using free range areas for laying hens	10

I don't know	5
Other	2
No answer	218
<b>Currently, the min. durability on egg packs should be not more than 28 days after laying</b>	
The current rules on minimum durability on egg packs should remain	34
There should be no specific provisions on minimum durability in marketing standards; food hygiene and horizontal rules on date marking ('use by', 'best before') should prevail	15
I don't know	25
Other	6
No answer	224
<b>Which action is needed on ORTs for poultrymeat?</b>	
No change	24
Addition (more)	64
Revision (different)	30
Reduction (fewer)	1
Elimination (none)	0
No answer	185
<b>Which action is needed on obligatory rules for poultrymeat?</b>	
No change	29
Addition (more)	21
Revision (different)	68
Reduction (fewer)	2
Elimination (none)	0
No answer	184
<b>Are you aware of the differences between the standards underlying the ORTs for poultry production systems (e.g. 'extensive indoor', 'free range', 'traditional free range' etc.)?</b>	
Yes	94
Somewhat	25
No	2
I don't know	2
No answer	181
<b>Are additional terms for labelling of poultrymeat from different production systems needed?</b>	
There should be no EU ORTs for poultrymeat production systems, and operators should be free to use any term to market their products as long as it is not misleading	2
The current EU terms for the labelling of poultrymeat should be maintained, but operators should be free to use new terms in addition to the regulated ones	16
The number of ORTs that can be used to describe production systems should be expanded.	57
The current number of ORTs for poultrymeat from different production systems is sufficient and should be maintained	25
The number of ORTs that can be used to describe production systems should be reduced	9
I don't know.	5
Other	8
No answer	182
<b>Current standards limit the total water content in poultrymeat in the interest of consumers; fast-growing poultry breeds have a higher water content but can increase resource efficiency</b>	
The current rules on water content in poultrymeat should remain	15
The rules on water content in poultrymeat should continue to focus on total water content but	14

allow regular adjustments to technical and genetic developments	
The rules on water content in poultrymeat should focus on extraneous water content only	27
The rules on water content in poultrymeat should be tightened and the limits for the total water content in poultrymeat should be reduced	39
I don't know	19
Other	6
No answer	184
<b>The definition of fresh poultrymeat in EU marketing standards does not include frozen meat</b>	
The current definition of fresh poultrymeat in the EU marketing standards should remain	33
The definition of fresh poultrymeat in the EU marketing standards should be revised to include frozen poultrymeat	58
I don't know	22
Other	5
No answer	186
<b>Currently, EU marketing standards for foie gras set a minimum liver weight</b>	
Current EU marketing standards for foie gras should be maintained	39
Remove min. weight, but allow label for foie gras made from minimum-weight livers	4
The minimum weight requirement should be removed from the EU standards	2
A maximum weight requirement should be introduced to avoid force-feeding	51
I don't know	26
Other	8
No answer	174
<b>Which action is needed on ORTs for other meats?</b>	
No change	6
Addition (more)	44
Revision (different)	13
Reduction (fewer)	0
Elimination (none)	0
No answer	241
<b>Which action is needed on obligatory rules for other meats?</b>	
No change	7
Addition (more)	36
Revision (different)	21
Reduction (fewer)	0
Elimination (none)	0
No answer	240
<b>Should a system with relevant ORTs (e.g. 'pasture-fed') to indicate aspects of animal welfare also be introduced to define production systems for other animals than poultry?</b>	
Yes	57
No	6
I don't know	4
No answer	237
<b>Which action is needed on ORTs for hops?</b>	
No change	6
Addition (more)	5
Revision (different)	3

Reduction (fewer)	1
Elimination (none)	0
No answer	289
<b>Which action is needed on obligatory rules for hops?</b>	
No change	6
Addition (more)	3
Revision (different)	5
Reduction (fewer)	1
Elimination (none)	0
No answer	289
<b>Currently, there are no marketing standards for hops, but EU regulation sets minimum marketing requirements and quality characteristics of hops and hop products</b>	
The current system for hops shall be maintained	6
New marketing standards for hops should be adapted	8
I don't know	6
Other	0
No answer	284
<b>Which action is needed on ORTs for honey?</b>	
No change	8
Addition (more)	12
Revision (different)	18
Reduction (fewer)	0
Elimination (none)	1
No answer	265
<b>Which action is needed on obligatory rules for honey?</b>	
No change	3
Addition (more)	12
Revision (different)	25
Reduction (fewer)	0
Elimination (none)	0
No answer	264
<b>Currently, the country or countries of origin where honey has been harvested shall be indicated, but for blends this indication can be replaced with 'blend of EU/non EU honeys'</b>	
Current EU rules on the labelling of honey should remain unchanged	4
Honey processors should have the option to label honey as from 'EU' or 'non EU' origin	2
Only for blends should there be the option to label them as 'blend of EU/non EU honeys'	0
Blends should have to be labelled with percentages of honey from EU and non EU origin	6
Labelling of individual countries should be the rule; in blends, honey from EU origin can be labelled as 'EU', but other honey should be labelled with the individual third countries	14
I don't know	4
Other	14
No answer	260
<b>Which action is needed on ORTs for olive oil and table olives</b>	
No change	7
Addition (more)	12
Revision (different)	11



Reduction (fewer)	0
Elimination (none)	0
No answer	274
<b>Which action is needed on obligatory rules for olive oil and table olives</b>	
No change	8
Addition (more)	7
Revision (different)	15
Reduction (fewer)	0
Elimination (none)	0
No answer	274
<b>How should the labelling of the origin of olive oil be regulated in EU marketing standards?</b>	
The origin of olive oils should not have to be indicated in any form	0
The current rules on the designation of the origin of olive oils should be maintained	7
The designation of origin of olive oils should be made more specific and require that the countries where the olives are harvested are indicated	6
The designation of origin of olive oil should be made more specific and require that the countries and regions where the olives were grown are indicated	15
I don't know	3
Other	2
No answer	271
<b>How should the bulk sale of olive oil to consumers be regulated in EU marketing standards?</b>	
The bulk sale of olive oil to consumers should in principle remain banned	12
The bulk sale of olive oil to consumers should be allowed if it is covered by equivalent authenticity guarantees and hygiene, labelling and traceability rules as are already in place for olive oil or for bulk sales of other products	16
The bulk sale of olive oil to consumers should be allowed without any restrictions	1
I don't know	3
Other	0
No answer	272
<b>How should the labelling of olive oil be regulated in EU marketing standards?</b>	
As is currently the case, the indication of the harvesting year should be voluntary	15
Indicating the harvesting year on extra-virgin and virgin olive oil should be mandatory	8
Indicating the harvesting year on extra-virgin and virgin olive oil as well as the date of bottling should be made mandatory	7
I don't know	3
Other	0
No answer	271
<b>Which action is needed on ORTs for plant-based protein products?</b>	
No change	9
Addition (more)	30
Revision (different)	7
Reduction (fewer)	2
Elimination (none)	4
No answer	252
<b>Which action is needed on obligatory rules for plant-based protein products?</b>	
No change	9

Addition (more)	29
Revision (different)	10
Reduction (fewer)	3
Elimination (none)	0
No answer	253
<b>Currently there are no EU marketing standards for plant-based protein products</b>	
There should continue to be no EU marketing standards for plant-based protein products	6
EU marketing standards for plant-based protein products should be introduced but be limited to aspects linked to sustainable production and healthy diets	13
EU marketing standards for plant-based protein products should be introduced across the board	27
I don't know	5
Other	8
No answer	245

#### 4. WRITTEN CONSULTATION OF MSS

All MSs were consulted in a targeted consultation from 17 September to 14 October 2021; 17 MSs submitted replies. MSs confirmed that marketing standards are a specific instrument that works and facilitates trade. They acknowledged that there is scope for updating them, but they also pointed out that duplications between this initiative and other initiatives relating to sustainable food production should be avoided, as should be duplications of standards that are already defined at the international level, not least to avoid creating technical barriers to trade. While marketing standards may not be the appropriate instrument for certain sustainability issues as there are dedicated certification schemes, ORTs can be used as voluntary additions to the minimum requirements prescribed by specific standards. Overall, for developing a sustainable food system the approach must be comprehensive, not scattered, and marketing standards are not the only way to take account of the various aspects of sustainability. Also, as marketing standards are product-specific, their revision should be evaluated on a case-by-case basis.

Regarding issues where they saw a need for a revision of marketing standards, these were origin labelling for honey blends, water content in poultrymeat, food waste in F&V, sugar content in jams and juices, date marking on eggs, foie gras, labelling of olive oil, and standards for plant-based food. But even if MSs generally agreed that marketing standards are beneficial, what they did not provide were any concrete figures or estimates relating to the possible impact of a revision of any of the marketing standards. (As one MSs wrote: 'In any case, and even without quantifying the cost-benefit ratio, we believe that the revision of marketing standards for agricultural products in the EU could have a positive impact.').

#### 5. TECHNICAL WORKSHOP

The technical workshop organised by the JRC on 9 September 2021 found that<sup>196</sup>:

- Marketing standards are welcomed by EU firms, in particular because they:

<sup>196</sup> Russo et al. (2022), <https://doi.org/10.2760/635080>.

- reduce transaction costs and information asymmetries, and increase transparency;
  - facilitate trade, grant market access, and level the playing field; and
  - support product-differentiation strategies and favour supply of quality products.
  - Certification and control costs for EU firms appear relatively modest.
  - EU marketing standards provide benefits for consumers.
  - Benefits of marketing standards outweigh the costs.
  - Minor adjustments of marketing standards may discourage innovation and fail to capture new trends in consumer demand and to comply with F2F recommendations.
  - Updating current marketing standards may enhance market efficiency and contribute to a more sustainable food system.
  - Extending EU marketing standards regulations to new products calls for an evaluation of costs and benefits in each sector as it could result in overregulation.
- More information is required to guide the regulatory process better.

## ANNEX 3: WHO IS AFFECTED AND HOW?

### 1. PRACTICAL IMPLICATIONS OF THE INITIATIVE

As also explained in Annex 4, this impact assessment does not rely on modelling or similar analytical techniques given that changes in marketing standards are difficult to capture in modelling exercises due to their technicality. Therefore, it mostly makes use of a qualitative assessment of the evidence listed in Annex 1. Moreover, as explained in Section 6, neither the external evaluation support study (Evaluation study 2019), nor the evaluation (SWD 2020), nor the public consultation (Annex 2), nor the targeted consultation of MSs (Annex 2), nor the JRC workshop (Workshop 2021), nor the literature review (JRC 2022), nor *ad hoc* consultations with stakeholders delivered cost estimates, but all confirm qualitatively that benefits outweigh costs. To the (limited) extent possible, available information is presented and discussed in the assessments of the key revisions (Section 10). The lack of data does not permit quantification of benefits but Table 9 provides a qualitative overview of the key benefits of the preferred options. Table 10 presents an estimation, based on literature review, of compliance costs for the preferred option for the five marketing standards assessed in detail in this report.

### 2. SUMMARY OF COSTS AND BENEFITS

*Table 9 - Overview of benefits – preferred option*

<b>I. Overview of Benefits (total for all provisions) – Preferred Option</b>		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>		
Benefits for citizens and consumers	n/a	- clearer information to consumers (better product identification), empowering consumers to make informed, healthy and sustainable food choices. - environmental benefits due to better use of resources (reduced waste) and more environmentally-friendly management of orchards for traditional production of cider and perry.
Benefits for businesses	n/a	- better valorisation of products.

		- increased legal certainty and standards updated to fit with recent developments.
<b>Indirect benefits</b>		
Benefits for businesses	n/a	- level playing field and facilitated business to business transactions and trade within and outside the EU.
<b>Administrative cost savings related to the 'one in, one out' approach*</b>		
Benefits for businesses	n/a	- The streamlining of existing marketing standards legislation will result in lower administrative costs for businesses by aligning or merging some rules. - The introduction of EU marketing standards for cider and perry will harmonise rules within the EU, thereby lowering the recurring administrative costs for businesses for complying with standards.

Table 10 - Overview of costs – preferred option

II. Overview of costs – Preferred option <sup>197</sup>							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Cider and perry	Direct adjustment costs - compliance with newly introduced EU standards, including possible reformulation	n/a	n/a	EUR 10 million	n/a	n/a	n/a
	Direct administrative costs - adaptation of labelling <sup>198</sup>	n/a	n/a	EUR 0.5 million	n/a	n/a	n/a
	Direct regulatory fees and charges	n/a	n/a	n/a	n/a	n/a	n/a
	Direct enforcement costs - new system of controls and enforcement <sup>199</sup>	n/a	n/a	n/a	~0	~0	~0
	Indirect costs	n/a	n/a	n/a	n/a	n/a	n/a
Fruit juices <sup>200</sup>	Direct adjustment costs	n/a	n/a	0	n/a	n/a	n/a
	Direct	n/a	n/a	0	n/a	n/a	n/a

<sup>197</sup> Given the nature of this impact assessment, which covers various individual standards, a full quantification is not possible – in particular because of limited data available on the sectors covered by the initiatives, including on costs. Further available information on costs, mainly qualitative, is presented in Section 10.

<sup>198</sup> Recurring labelling costs are business-as-usual. Changes to labels are assessed to be minor as the change in marketing standard requires a change in the text on the label but would not require redesigning the whole label.

<sup>199</sup> Controls on marketing standards are usually combined with other controls. Additional recurring costs are therefore estimated to be negligible.

<sup>200</sup> The changes proposed under the preferred option for the revision of marketing standards for fruit juice will not change mandatory requirements. The administrative burden is therefore set to zero. Businesses producing sugar-reduced fruit juices who decide to update their labels as provided for under the proposed revision will face a one-off cost; considering that such products are still a novelty on the EU market, the impact on businesses of adapting labels is assessed negligible.

	administrative costs						
	Direct regulatory fees and charges	n/a	n/a	n/a	n/a	n/a	n/a
	Direct enforcement costs	n/a	n/a	n/a	~0	~0	~0
	Indirect costs	n/a	n/a	n/a	n/a	n/a	n/a
Jams	Direct adjustment costs <sup>201</sup>	n/a	n/a	0	n/a	n/a	n/a
	Direct administrative costs - adaptation of labelling <sup>197</sup>	n/a	n/a	EUR 10 million	n/a	n/a	n/a
	Direct regulatory fees and charges	n/a	n/a	n/a	n/a	n/a	n/a
	Direct enforcement costs - revised controls	n/a	n/a	n/a	~0	~0	~0
	Indirect costs	n/a	n/a	n/a	n/a	n/a	n/a
Honey	Direct adjustment costs	n/a	n/a	n/a	n/a	n/a	n/a
	Direct administrative costs - adaptation of labelling - improved traceability and segregation system	n/a	n/a	EUR 7 million	Not quantifiable <sup>202</sup>	n/a	n/a
	Direct regulatory fees and charges	n/a	n/a	n/a	n/a	n/a	n/a
	Direct enforcement costs - revised controls	n/a	n/a	n/a	~0	~0	~0
	Indirect costs	n/a	n/a	n/a	n/a	n/a	n/a
Foie gras <sup>203</sup>	Direct adjustment costs	n/a	n/a	0	0	n/a	n/a
	Direct administrative	n/a	n/a	0	n/a	n/a	n/a

<sup>201</sup> The change proposed under the preferred option to raise the minimum fruit content would affect about 15% of products on the market, as most manufacturers offer products with a higher fruit content than the minimum standard. This type of jam is mostly purchased by institutional catering, such as hospitals, nursing homes and schools. It is not expected that manufacturers reformulate these to meet the revised marketing standards. Products with lower fruit content could still be marketed as fruit spread.

<sup>202</sup> The preferred option for the revision of honey requires country origin labelling. This will likely require honey packers to relabel their products depending on the exact origin of batches, and could translate in a recurring adaptation of the label. It is however not possible to estimate the frequency of the changes to the label, nor to distinguish this from the business-as-usual costs.

<sup>203</sup> The impact assessment does not identify a preferred option for foie gras at this stage. The costs reflected in the table are therefore equal to zero, corresponding to the baseline.

	costs						
	Direct regulatory fees and charges	n/a	n/a	n/a	n/a	n/a	n/a
	Direct enforcement costs	n/a	n/a	n/a	0	0	0
	Indirect costs	n/a	n/a	n/a	n/a	n/a	n/a
<b>Costs related to the 'one in, one out' approach</b>							
TOTAL	Direct and indirect adjustment costs	n/a	n/a	EUR 10.0 million	n/a		
	Administrative costs (for offsetting)	n/a	n/a	EUR 17.5 million	n/a		

### 3. RELEVANT SUSTAINABLE DEVELOPMENT GOALS

III. Overview of relevant Sustainable Development Goals – Preferred Option(s)		
Relevant SDG	Expected progress towards the Goal	Comments
#2	Contribute to food security, nutrition and sustainable agriculture.	The revision brings the EU closer to the goals.
#3	<ul style="list-style-type: none"> <li>Ensure healthy lives and promote well-being for all at all ages (Support high quality production).</li> </ul>	
#8	<ul style="list-style-type: none"> <li>Develop markets and facilitate market access, in particular for farmers in least developed countries.</li> <li>Build confidence and create market opportunities.</li> <li>Define a common 'language' for all participants in a supply chain.</li> <li>Facilitate business transactions through given quality requirements.</li> <li>Increase profitability of producers.</li> </ul>	
#12	Help reduce food loss and waste and use natural resources efficiently.	
#13	Lower greenhouse gas emissions without threatening food production	
#15	Contribute to biodiversity protection	

## ANNEX 4: ANALYTICAL METHODS

This impact assessment largely relies on stakeholder consultation and literature review. It does not rely on modelling or similar analytical techniques given that changes in marketing standards are difficult to capture in modelling exercises due to their technicality. As explained in the introduction to Section 6, there is a general lack of available quantitative data, considering that marketing standards are largely technical and the sectors covered in this report very specific. Therefore, this impact assessment mostly makes use of a qualitative assessment of the evidence listed in Annex 1. This includes in particular the external evaluation support study by the contractor (Evaluation study 2019) and the staff working document (SWD 2020) on the evaluation of marketing standards,

JRC literature review, the JRC report on the technical workshop, and input received by stakeholders through various consultation activities.

Regarding stakeholder consultation, a limited number of feedbacks were received following publication of the roadmap (156 feedbacks) as well as a limited number of responses to the public consultation (304 respondents). Moreover, questions on sectoral initiatives in the public consultation were replied by an even lower number of respondents (between 23 and 141 depending on the sector). For this reason, key stakeholders were also extensively reached through complementary consultations and bilateral exchanges via email and ad hoc video meetings.

The assessment also draws on information from additional scientific publications and the grey literature, which are referenced in the footnotes. It also uses the Commission's in-house expertise to evaluate the available qualitative information, which is still evidence. To the extent possible, available information originating from different sources was triangulated. Moreover, a consensus emerged from the received feedback that the cost impact of the initiative is very modest and the trade-offs with the resulting benefits are positive. The limitations of qualitative evidence are factored into the assessment; to improve future assessment of marketing standards, the report proposes under the relevant Sections an approach to improve the availability of quantitative evidence and information gathering in future.

Given the heterogeneous nature and technical nature of the different options for the revisions of marketing standards for products in different sectors, and given the differences in policy relevance, assessing the impacts in a single consolidated framework was not considered appropriate, because of the lack of quantitative data that makes it difficult to use any kind of metrics and the limited homogeneity that would result from the analysis. Therefore we prioritised the most relevant revisions (based on their expected impacts, their novelty or because of the sensitivity with stakeholders), and – taking a case-wise approach<sup>204</sup> – we made more comprehensive assessments of the prioritised revisions in the report. The other revisions, which represent only minor changes for which there are no actual policy choices, no significant impacts or which are technical and not politically sensitive, are then discussed more briefly in Annex 9.

### **Assessment of administrative burden**

The identification of the administrative burden which would result from the preferred option under the five most relevant initiatives results from the assessment of options for which the methodology is described above. Their quantification is however largely based on literature review.

For cider and perry, Eurostat data on the number of enterprises manufacturing cider and other fruit wines was used as proxy of the number of cider and perry producers, corresponding to 773 for 2019<sup>205</sup>, with an average of two to three stock keeping units (SKUs) per manufacturer. Costs for compliance with new marketing standards, in particular linked reformulation of products not complying with the new standards, and

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<sup>204</sup> <https://doi.org/10.1186/1471-2288-11-100>; <https://doi.org/10.1177/1609406919862424>.

<sup>205</sup> Annual detailed enterprise statistics for industry [sbs\_na\_ind\_r2], 2019 data.

costs for relabelling the product are based on the estimates provided in studies<sup>206</sup>. Changes to labels are assessed to be minor as the change in marketing standard requires a change in the text on the label but would not require redesigning the whole label. The cost was therefore estimated at EUR 1 000 per stock keeping unit. It was assumed only 25% of cider and perry products would require reformulation and relabelling as over 50% of manufacturers are located in MSs where national or private standards are already in place or where producers already apply higher standards (e.g. under national or private standards); in addition in other countries, small traditional producers also already apply such higher standards. Recurring labelling costs are considered business-as-usual.

The resulting calculation of costs is as follows:

- Direct adjustment costs for compliance with newly introduced EU standards, including possible reformulation:

$$\begin{aligned} & \text{number of SKUs (2000)} \\ & \quad \times \\ & \text{cost for reformulation (EUR 20 000)} \\ & \quad \times \\ & \text{share of affected operators (25\%)} \\ & = \text{EUR 10 million} \end{aligned}$$

- Direct administrative costs for adaptation of labelling:

$$\begin{aligned} & \text{number of SKUs (2000)} \\ & \quad \times \\ & \text{cost for change in label (EUR 1 000)} \\ & \quad \times \\ & \text{share of affected operators (25\%)} \\ & = \text{EUR 0.5 million} \end{aligned}$$

The changes proposed under the preferred option for the revision of marketing standards for fruit juice will not change mandatory requirements. The administrative burden is therefore set to zero. Businesses producing sugar-reduced fruit juices who decide to update their labels as provided for under the proposed revision will face a one-off cost; considering that such products are still a novelty on the EU market, the impact on businesses of adapting labels is assessed negligible and was not quantified.

For jams, in absence of quantitative data, the number of producers was estimated based on experts' opinion at around 450, with an average of 40 to 50 SKUs per manufacturer. The change proposed under the preferred option to raise the minimum fruit content from 350g to 450 g per kilo would affect about 15% of products on the market, as most manufacturers offer products with a higher fruit content than the minimum standard. This type of jam is mostly purchased by institutional catering, such as hospitals, nursing homes and schools. It is not expected that manufacturers reformulate these to meet the revised marketing standards, as most manufacturers already propose alternative jams with higher fruit contents. Products with lower fruit content could still be marketed as fruit spread, which would require a change in labelling. The raise of the minimum fruit

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<sup>206</sup> Developing a Framework for Assessing the Costs of Labelling Changes in the UK, 2010; Cost Schedule for Food Labelling Changes, 2008; FDA Labeling Cost Model, 2003, Cost of Reformulating Foods and Cosmetics, 2002.



content for extra jam from 450g to 500g per kilo implies that those products with a fruit content between 450g and 500g per kilo would also require a change in labelling. It is estimated that overall approximately 50% of the products would have to be relabelled. Costs for relabelling the product are based on the same estimates than for cider and perry (EUR 1 000 per stock keeping unit, see above). Similarly to cider and perry, changes to labels are assessed to be minor as the change in marketing standard requires a change in the text on the label but would not require redesigning the whole label. Recurring labelling costs are considered business-as-usual.

The resulting calculation of costs is as follows:

- Direct administrative costs – adaptation of labelling:

$$\begin{aligned} & \text{number of SKUs (20 000)} \\ & \quad \times \\ & \text{cost for change in label (EUR 1 000)} \\ & \quad \times \\ & \text{share of affected operators (50\%)} \\ & = \text{EUR 10 million} \end{aligned}$$

For honey, the costs for improving the traceability and segregation allowing country origin labelling of honey blends are estimated as a percentage of the total EU market value. The percentage corresponds to an average of the estimations (between 0.1% and 0.5%), used in a similar study<sup>207</sup> of the administrative burden resulting from setting up a traceability and segregation system for origin labelling. The EU honey market is estimated at a value of EUR 2.3 billion (EU consumption is estimated at 366 000 t.). The costs for recurring adaptation of the label in function of the exact origin of batches could not be estimated as the required frequency of label changes is unknown, and it is unclear which share of these recurring costs are business-as-usual.

The resulting calculation of costs is as follows:

Direct administrative costs for adaptation of labelling and improved traceability and segregation system:

$$\begin{aligned} & \text{market value (EUR 2.3 billion) X 0.3\%} \\ & = \text{EUR 7 million} \end{aligned}$$

For foie gras, the impact assessment does not identify a preferred option at this stage. The costs are therefore equal to zero, corresponding to the baseline.

Controls on marketing standards are usually combined with other controls. Additional recurring costs for controls, relevant for cider and perry, jams, fruit juices and honey, are therefore estimated to be negligible and were not quantified.

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<sup>207</sup> Évaluation de l'application du décret n° 2016-1137 relatif à l'indication de l'origine du lait et du lait et des viandes utilisés en tant qu'ingrédients, 2019.

## **ANNEX 5: LEGAL BASES AND LEGISLATION FOR MARKETING STANDARDS**

### **All legislation where EU marketing standards for agricultural products are set out (by sector/product):**

#### Eggs and hatching eggs:

- Commission Regulation (EC) No 589/2008 laying down detailed rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs, OJ L 163/6;
- Commission Regulation (EC) No 617/2008 laying down detailed rules for implementing Regulation (EC) No 1234/2007 as regards marketing standards for eggs for hatching and farmyard poultry chicks, OJ L 168/5;

#### Fruit and vegetables:

- Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the F&V and processed F&V sectors, OJ L 157/1;
- Commission Regulation (EC) No 1666/1999 of 28 July 1999 laying down detailed rules for the application of Council Regulation (EC) No 2201/96 as regards the minimum marketing characteristics for certain varieties of dried grapes;

#### Bananas:

- Commission Implementing Regulation (EU) No 1333/2011 laying down marketing standards for bananas, rules on the verification of compliance with those marketing standards and requirements for notifications in the banana sector, OJ L 336/23;

#### Poultrymeat:

- Commission Regulation (EC) No 543/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat, OJ L 157/46;

#### Bovine meat:

- Commission Regulation (EC) No 566/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing of the meat of bovine animals aged 12 months or less, OJ L 160/22;
- Regulation (EC) No 1760/2000 of the European Parliament and of the Council establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products, OJ L 204/1;
- Commission Regulation (EC) No 1825/2000 laying down detailed rules for the application of Regulation (EC) No 1760/2000 of the European Parliament and of the Council as regards the labelling of beef and beef products, OJ L 216/8;

#### Hops:

- Commission Regulation (EC) No 1850/2006 of 14 December 2006 laying down detailed rules for the certification of hops and hop products, OJ L 355/72;

- Commission Regulation (EC) No 1295/2008 of 18 December 2008 on the importation of hops from third countries, OJ L 340/45;

#### Milk and milk products:

- Commission Regulation (EC) No 445/2007 provides detailed rules for applying Regulations (EC) No 2991/94 and (EEC) No 1898/87 regarding the use of the designation ‘butter’, OJ L 106/24;
- Commission Decision 2010/791/EU on the descriptions of milk and milk products the exact nature of which is known because of traditional use and/or when the designations are clearly used to describe a characteristic quality of the product, OJ L 336/55;
- Council Directive 2001/114/EC of 20 December 2001 relating to certain partly or wholly dehydrated preserved milk for human consumption<sup>208</sup>, OJ L 15/19, based on Article 43 TFEU (CAP);
- First Commission Directive 79/1067/EEC on Community methods of analysis for testing certain partly or wholly dehydrated preserved milk for human consumption, OJ L 327/29;
- First Commission Directive 87/524/EEC on Community methods of sampling for chemical analysis for the monitoring of preserved milk products, OJ L 306/524;
- Directive (EU) 2015/2203 of the European Parliament and of the Council of 25 November 2015 on the approximation of the laws of the Member States relating to caseins and caseinates intended for human consumption and repealing Council Directive 83/417/EEC<sup>209</sup>, OJ L 314/1, based on Article 114 TFEU (Single Market);
- Commission Decision 2010/791/EU listing the products referred to in the second subparagraph of point III(1) of Annex XII to Council Regulation (EC) No 1234/2007 (dehydrated milk), OJ L 336/55;

#### Olive oil:

- Commission Implementing Regulation (EU) 29/2012 of 13 January 2012 on marketing standards for olive oil, OJ L 12/14;
- Commission Regulation (EC) 2568/91 of 11 July 1991 on the characteristics of olive oil and olive-residue oil and on the relevant methods of analysis, OJ L 248/1;

#### Wine:

- 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 file, OJ L 149/1;
- Commission Implementing Regulation (EU) 2019/935 of 16 April 2019 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards analysis methods for determining the physical, chemical

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<sup>208</sup> <http://data.europa.eu/eli/dir/2001/114/2013-11-18>.

<sup>209</sup> <http://data.europa.eu/eli/dir/2015/2203/oj>.

and organoleptic characteristics of grapevine products and notifications of Member States decisions concerning increases in natural alcoholic strength, OJ L 149/53;

- 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, OJ L 9/2;
- Commission Implementing Regulation (EU) 2019/34 of 17 October 2018 laying down rules for the application of 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, amendments to product specifications, the register of protected names, cancellation of protection and use of symbols, and of Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards an appropriate system of checks, OJ L 9/46;
- Commission Delegated Regulation (EU) 2018/273 of 11 December 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, the vineyard register, accompanying documents and certification, the inward and outward register, compulsory declarations, notifications and publication of notified information, and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks and penalties, amending Commission Regulations (EC) No 555/2008, (EC) No 606/2009 and (EC) No 607/2009 and repealing Commission Regulation (EC) No 436/2009 and Commission Delegated Regulation (EU) 2015/560, OJ L 58/1;

Fruit juices:

- Council Directive 2001/112/EC of 20 December 2001 relating to fruit juices and certain similar products intended for human consumption<sup>210</sup>, OJ L 10/58, based on Article 43 TFEU (CAP);

Jams, jellies, marmalades and sweetened chestnut purée:

- Council Directive 2001/113/EC of 20 December 2001 relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption<sup>211</sup>, OJ L 10/67, based on Article 43 TFEU (CAP);

Cocoa and chocolate:

- Directive 2000/36/EC of the European Parliament and of the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption<sup>212</sup>, OJ L 197/19, based on Article 114 TFEU (Single Market);

Coffee and chicory:

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<sup>210</sup> <http://data.europa.eu/eli/dir/2001/112/2014-10-05>.

<sup>211</sup> <http://data.europa.eu/eli/dir/2001/113/2013-11-18>.

<sup>212</sup> <http://data.europa.eu/eli/dir/2000/36/2013-11-18>

- Directive 1999/4/EC of the European Parliament and of the Council of 22 February 1999 relating to coffee extracts and chicory extracts, OJ L 66/26, based on Article 114 TFEU (Single Market);

Honey:

- Council Directive 2001/110/CE of 20 December 2001 relating to honey<sup>213</sup>, OJ L 10/47, based on Article 43 TFEU (CAP);

Sugar:

- Council Directive 2001/111/EC of 20 December 2001 relating to certain sugars intended for human consumption<sup>214</sup>, OJ L 10/53, based on Article 43 TFEU (CAP).

### **Empowerments for Delegated Acts under Regulation (EU) No 1308/2013**

- Article 75(2): marketing standards by sectors or products, at all stages of the marketing, as well as derogations and exemptions from such standards;
- Article 75(6): new marketing standards (e.g. for cider and perry). It should be noted that in accordance with this provision a Commission report to the European Parliament and to the European Council is required before any change can be made to the list of products covered by EU marketing standards. This impact assessment can serve as the said report;
- Article 76(4): derogations to additional requirements for marketing of F&V;
- Article 77(5): trade for hops;
- Articles 78(3) and (4): definition and sale descriptions laid down in Annex VII;
- Article 79(1): tolerance;
- Article 83(4): application of national rules for certain products or sectors;
- Articles 86, 87(2), 88(3): optional reserved terms;
- Article 89: equivalence of imported products.

### **Empowerments for Implementing Acts under Regulation (EU) No 1308/2013**

- Article 91: rules for the implementation of provisions contained in the CMO Regulation and in Delegated Acts.

## **ANNEX 6: MAPPING OF RELEVANT OTHER INITIATIVES**

Mainstreaming sustainability into EU policies is at the heart of the European Green Deal, the Commission's strategy to implement the United Nation's 2030 Agenda and the

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<sup>213</sup> <http://data.europa.eu/eli/dir/2001/110/2014-06-23>.

<sup>214</sup> <http://data.europa.eu/eli/dir/2001/111/2013-11-18>.

Sustainable Development Goals (SDGs).<sup>215</sup> In this regard, the European Green Deal is Europe's long-term growth strategy and contributes to progressing towards at least 12 of the 17 SDGs. A number of legislative and non-legislative efforts announced by the Commission under the Green Deal, most notably the F2F strategy<sup>216</sup> (F2F), the Circular Economy Action Plan<sup>217</sup> (CEAP) and the Europe's Beating Cancer Plan<sup>218</sup>, are relevant for the present assessment, especially when considering the policy options that entail the incorporation of sustainability elements in the revised marketing standards.

In addition, the Commission is working on a new initiative (Healthier together<sup>219</sup>) to support EU countries to improve the health of citizens by reducing the burden of the main Non-Communicable Diseases. This initiative will help MSs and stakeholders address challenges in cardiovascular diseases, diabetes, chronic respiratory diseases, mental health and neurological disorders, and also health determinants (in coordination with the Europe's Beating Cancer Plan). The priorities and actions have been discussed with the Member States in the subgroup of the Steering Group on Promotion and Prevention<sup>220</sup> and with the stakeholders at the Health Policy Platform<sup>221</sup>. The outcome of the discussions will be presented on 22 June 2022<sup>222</sup> in a webinar hosted by Commissioner Kyriakides. The actions identified in the initiative will feed into actions to be supported under the EU4Health programme.

## 1. THE FARM TO FORK STRATEGY

F2F aims at designing a fair, healthy and environmentally friendly food system. The strategy was launched by the Commission in May 2020 as a comprehensive approach to value food sustainability and improve lifestyles, health, and the environment. The goal is to reduce the environmental and climate footprint of the EU food system by:

- ensuring that the food chain, covering food production, transport, distribution, marketing and consumption, has a neutral or positive environmental impact, preserving and restoring the land, freshwater and sea-based resources on which the food system depends; helping to mitigate climate change and adapting to its impacts; protecting land, soil, water, air, plant and animal health and welfare; and reversing the loss of biodiversity;
- ensuring food security, nutrition and public health – making sure that everyone has access to sufficient, nutritious, sustainable food that upholds high standards of safety and quality, plant health, and animal health and welfare, while meeting dietary needs and food preferences; and;
- preserving the affordability of food, while generating fairer economic returns in the supply chain, so that ultimately the most sustainable food also becomes the most affordable, fostering the competitiveness of the EU supply sector, promoting fair trade, creating new business opportunities, while ensuring integrity of the single market and occupational health and safety.

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<sup>215</sup> COM(2019) 640 final.

<sup>216</sup> COM(2020) 381 final.

<sup>217</sup> COM(2020) 98 final.

<sup>218</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_342](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_342).

<sup>219</sup> [https://ec.europa.eu/health/latest-updates/flash-report-stakeholder-webinar-healthier-together-eu-non-communicable-diseases-initiative-15-2021-12-16\\_en](https://ec.europa.eu/health/latest-updates/flash-report-stakeholder-webinar-healthier-together-eu-non-communicable-diseases-initiative-15-2021-12-16_en).

<sup>220</sup> [https://ec.europa.eu/health/non-communicable-diseases/steering-group\\_en](https://ec.europa.eu/health/non-communicable-diseases/steering-group_en).

<sup>221</sup> <https://webgate.ec.europa.eu/hpf/>.

<sup>222</sup> [ncd\\_20220622\\_ag\\_en\\_2.pdf \(europa.eu\)](https://ec.europa.eu/health/non-communicable-diseases/ncd_20220622_ag_en_2.pdf).

The strategy calls for an acceleration of the shift to sustainable food production and lists 27 actions, including the revision of EU marketing standards for agricultural products, which is subject of this impact assessment. A revision of the marketing standards for fisheries and aquaculture products is carried out in a separate but coordinated initiative.

In general terms, initiatives in the F2F aim at:

- ensuring sustainable food production;
- stimulating sustainable food processing, wholesale, retail, and food services' practices;
- promoting sustainable food consumption, facilitating the shift towards healthy, sustainable diets;  
and reducing food loss and waste.

While all initiatives pursue the goal of a transition towards a more sustainable food system, but there are more specific initiatives that are directly relevant for the revision of marketing standards, also to ensure coherence:

- Action 1: Proposal for a legislative framework for sustainable food systems, Q4 2023.
- Action 7: Evaluation and revision of the existing animal welfare legislation, Q4 2023.
- Action 14: Develop an EU code and monitoring framework for responsible business and marketing conduct in the food supply chain
- Action 15: Launch initiatives to stimulate reformulation of processed food, Q4 2021.
- Action 16: Set nutrient profiles to restrict promotion of food, Q4 2022.
- Action 20: Harmonised mandatory front-of-pack nutrition labelling, Q4 2022.
- Action 21: Proposal to require origin indication for certain products, Q4 2022.
- Action 23: Proposal for a sustainable food labelling framework, now merged with Action 1 (Q4 2023).
- Action 27: Proposal for a revision of EU rules on date marking, Q4 2022.

The **Common Agricultural Policy** and **Common Fisheries Policy** will play a key role in the transformation of the EU food systems. The CAP, will play a particularly important role as the Member States will have to consider the objectives and targets of the F2F Strategy in their National Strategic Plans. In its 2017 Communication “The Future of Food and Farming” in which it set out its ideas for the CAP framework post 2020, the Commission identified 13 of the 17 SDGs to which the CAP could contribute while noting that the CAP objectives should fulfil both Treaty obligations as well as a number of SDGs.

### **Proposal for a legislative framework for sustainable food systems (FSFS)**

As regards Action 1 above, this horizontal legislation will aim at mainstreaming sustainability into all food related policies and strengthen the overall resilience of the EU food system.<sup>223</sup> The action aims at laying down definitions relevant to sustainable food systems, including the definition of ‘sustainable food system’. Furthermore, it will set out

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<sup>223</sup> Inception impact assessment, 28 September 2021, [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13174-Sustainable-EU-food-system-new-initiative\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13174-Sustainable-EU-food-system-new-initiative_en); also see: Bock et al. (2022). Concepts for a sustainable EU food system, <https://doi.org/10.2760/381319>.

general principles, objectives, requirements and responsibilities for all actors of the food system.

The Framework law will also introduce a general framework for the establishment of an EU sustainability label (Action 23) that would cover environmental and socio-economic aspects. Those aspects, as well as substantiation rules of sustainability claims will be further detailed in secondary legislation.

Changes considered in this impact assessment therefore focus on revisions that appear, at this juncture, relevant and proportionate to achieve incremental progress on sustainability and thus contribute to the sustainability transition promoted by the Framework law and the F2F. In any case, the sequencing of the F2F actions suggests that further adaptations to marketing standards cannot be excluded should they prove necessary to align the standards to horizontal policy choices. As explained in the Commission's inception impact assessment for the framework law, it could function as a *lex generalis*, while *lex specialis*, such as the marketing standards policy, would address further specific sustainability considerations.

### **Revision of EU marketing standards for fishery and aquaculture products**

The revisions of EU marketing standards for agricultural products and for fishery and aquaculture products are two separate initiatives although under the same F2F heading. All relevant Commission services were part of the Interservice Groups for each of the two revisions (Annex 1), but both the sectors and the scope of the revisions are distinct and therefore also the approaches followed for the impact assessments were different<sup>224</sup>.

### **EU Code of Conduct on Responsible Food Business and Marketing Practices**

The EU Code of Conduct on Responsible Food Business and Marketing Practices is a voluntary industry initiative, launched in July 2021 under the F2F. It aims to improve the sustainability performance mainly of the food processing, food service and distribution industry and sets out aspirational objectives and corresponding indicative actions, including one on improved food consumption patterns in the EU<sup>225</sup>. Signatories have made individual commitments under the Code, which also include commitments on reformulation.<sup>226</sup>

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<sup>224</sup> Apart from addressing sector-specific technical issues regarding minimum sizes and grading of fish, the impact assessment for the revision of EU marketing standards for fishery and aquaculture products is also different in that it focuses on adding labelling to inform consumers about the sustainability of seafood – in a context where there are already established private sustainability schemes in the sector and the overarching F2F initiative on sustainability labelling is still only forthcoming.

In contrast, the revision of EU marketing standards for agricultural products focuses on aligning current rules with the requirements of the Treaty of Lisbon and on updating them to take into account technological change and evolving consumer preferences. Where a revision targets sustainability concerns, it does not do so via labelling but within the logic of agricultural marketing standards (e.g. in the case of 'ugly' F&V by re-balancing aesthetical vs food waste concerns, or in the case of installing solar panels in free-range areas for poultry by expanding an existing list of permitted dual-uses of such areas). Where a revision does touch upon the 'labelling' of certain information, indicating the origin of produce has always been part of agricultural marketing standards, and also the ORTs that can be used on poultry products are part of the existing standards.

<sup>225</sup> [https://ec.europa.eu/food/horizontal-topics/farm-fork-strategy/sustainable-food-processing/code-conduct\\_en](https://ec.europa.eu/food/horizontal-topics/farm-fork-strategy/sustainable-food-processing/code-conduct_en).

<sup>226</sup> [https://ec.europa.eu/food/horizontal-topics/farm-fork-strategy/sustainable-food-processing/code-conduct/individual-pledges\\_en](https://ec.europa.eu/food/horizontal-topics/farm-fork-strategy/sustainable-food-processing/code-conduct/individual-pledges_en).



## Revision of the Regulation on Food Information to Consumers

As part of F2F, the Commission announced to revise EU rules on the information provided to consumers<sup>227</sup>. The aim of revising FIC is to ensure better labelling information to help consumers make healthier and more sustainable food choices and tackle food waste, by proposing to:

- introduce harmonised mandatory front-of-pack nutrition labelling and set nutrient profiling criteria to restrict claims made on foods;
- extend mandatory origin or provenance information for certain products, and;
- revise the rules on date marking ('use by' and 'best before' dates).

In addition, the proposed revision of FIC will follow up on the Europe's Beating Cancer Plan by considering introducing mandatory indications of the list of ingredients and the nutrition declaration for all alcoholic beverages.

While there are certain overlaps between the two initiatives, the revision of EU marketing standards focuses more on quality characteristics rather than on nutrient content (e.g. fruit content in jams or juices); it revises and aligns origin labelling of existing marketing standards, also by removing exemptions (e.g. honey blends, or fresh and dried pulses, dried fruits); and it removes data marking where this contradicts other EU rules (e.g. for eggs). All those revisions where there is a potential overlap with FIC were discussed and agreed between the relevant services, both within the ISG and in bilateral meetings.

## 2. THE CIRCULAR ECONOMY ACTION PLAN

Under the European Green Deal, the Commission announced the Circular Economy Action Plan (CEAP) in March 2020<sup>228</sup>. The CEAP is a new sustainable product policy framework that includes measures along the entire life cycle of products with the aim of strengthening European competitiveness, protecting the environment and giving new rights to consumers. These initiatives will help the EU deliver on its commitments and actions under SDGs 6, 12, and 15, as well as on other SDGs from a crosscutting perspective that considers a healthy planet a prerequisite for healthy people and prosperity. One of the measures introduced under the CEAP aims at reducing the risk of false green claims on products sold on the EU market ('green washing').

### European Climate Law

The European Climate Law<sup>229</sup> writes into law the goal set out in the European Green Deal for Europe's economy and society to become climate-neutral by 2050. The law also sets the intermediate target of reducing net greenhouse gas emissions by at least 55% by 2030, compared to 1990 levels. Climate neutrality by 2050 means achieving net zero greenhouse gas emissions for EU countries as a whole, mainly by cutting emissions, investing in green technologies and protecting the natural environment. The law aims to ensure that all EU policies contribute to this goal and that all sectors of the economy and society play their part, ensuring strong coherence across Union policies with the climate neutrality objective. The Climate law also contains a commitment to engage with sectors

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<sup>227</sup> [https://ec.europa.eu/food/safety/labelling-and-nutrition/food-information-consumers-legislation\\_en](https://ec.europa.eu/food/safety/labelling-and-nutrition/food-information-consumers-legislation_en).

<sup>228</sup> [https://ec.europa.eu/environment/strategy/circular-economy-action-plan\\_de](https://ec.europa.eu/environment/strategy/circular-economy-action-plan_de).

<sup>229</sup> [https://climate.ec.europa.eu/eu-action/european-green-deal/european-climate-law\\_en](https://climate.ec.europa.eu/eu-action/european-green-deal/european-climate-law_en).

to prepare sector-specific roadmaps charting the path to climate neutrality in different areas of the economy.

EU marketing standards contribute, where pertinent, to achieving this climate-neutral goal, in line with the specific objective of the current initiative to address relevant sustainability issues.

### **Green claims initiative**

Currently, there are no detailed rules on substantiating green claims. Under the Unfair Commercial Practices Directive<sup>230</sup>, national competent authorities can only prohibit environmental claims that they find to be misleading towards consumers on a case-by-case basis. In this context, the Commission plans to table a legislative proposal requiring green claims to be substantiated by using a standard methodology assessing the impact of EU products on the environment, namely the Product Environmental Footprint (PEF) and the Organisation Environmental Footprint (OEF) methods. Both methods were developed by the Commission and are enshrined in [Commission Recommendation 2013/179](#) on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations.

As the title of the Recommendation indicates, PEF and OEF are life cycle assessment methods. Environmental performance is calculated taking into consideration the environmental impacts throughout the supply chain, from the extraction or growing of resources to the end of life of the product or the product portfolio of an organisation, respectively.

The initiative measures performance on 16 impact categories: climate change; ozone depletion; human toxicity (cancer effects); human toxicity (non-cancer effects); particulate matter; ionising radiation; photochemical ozone formation; acidification; eutrophication (terrestrial); eutrophication (freshwater); eutrophication (marine); ecotoxicity (freshwater); land use; resource depletion (water); resource depletion (mineral and fossil).

Based on the PEF methodology, a number of Product Environmental Footprint Category Rules (PEFCRs) have been developed or are under development. PEFCRs are the set of rules that specify how the PEF method shall be applied for a specific product category.

#### Interaction with the revision of EU marketing standards for agricultural products:

The green claims initiative and the revision of the marketing standards have different objectives. While the former addresses voluntary claims and defines requirements for substantiating such claims, the second considers the introduction of regulatory standards that provide transparency on certain sustainability aspects for food. It is not clear whether the revision of marketing standards will address any of the 16 impact categories defined under the PEF methodology. If it does, consistency with the PEF methodology will be ensured. On the other hand, the sustainability aspects considered under the policy options for the standards revision addressing other impact categories than the ones defined by the PEF methodology could feed into the ongoing work on the PEFCR initiatives. In this way, both initiatives complement each other and can potentially achieve synergies.

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<sup>230</sup> Directive 2005/29/EC, <http://data.europa.eu/eli/dir/2005/29/oj>.

## **Green consumer empowerment**

Under the CEAP, a legislative proposal on empowering consumers for the green transition will complement the green claims initiative described above. The aim of the initiative is to improve consumer information and strengthen consumer protection against commercial practices that counteract Green Deal and CEAP objectives, e.g. greenwashing and early obsolescence. The consumer empowerment initiative is linked to the New Consumer Agenda adopted by the Commission in November 2020 that entails an update of the overall strategic framework of the EU consumer policy. The green transition is one of the five priority areas of the New Consumer Agenda.

### Interaction with the revision of EU marketing standards for agricultural products:

The scopes of the two initiatives are different. The green consumer empowerment initiative aims to address voluntary sustainability logos or labels and online information tools. The revision of the marketing standards considers the introduction of a regulatory standard providing transparency on specific sustainability aspects (fundamentally different approach than a logo or label) and does at this stage not consider any online information tool. This means that there will not be any regulatory overlap between the two initiatives. Furthermore, the policy options considered under the revision of the marketing standards are in line with and support the principles underpinning the green consumer empowerment initiative, i.e. enhancing transparency on product sustainability for the consumer.

## **Revision of the Packaging and Packaging Waste Directive**

In a ‘circular economy’, waste is reduced and goods are re-used and recycled as much as possible. This means that packaging waste should also be reduced, and packaging should be made easier to recycle.

The Commission proposed in 2022 to revise the requirements on packaging and packaging waste in the EU<sup>231</sup>. This would include assessing how to:

- improve packaging design to promote reuse and recycling
- increase recycled content in packaging
- tackle excessive packaging
- reduce packaging waste.

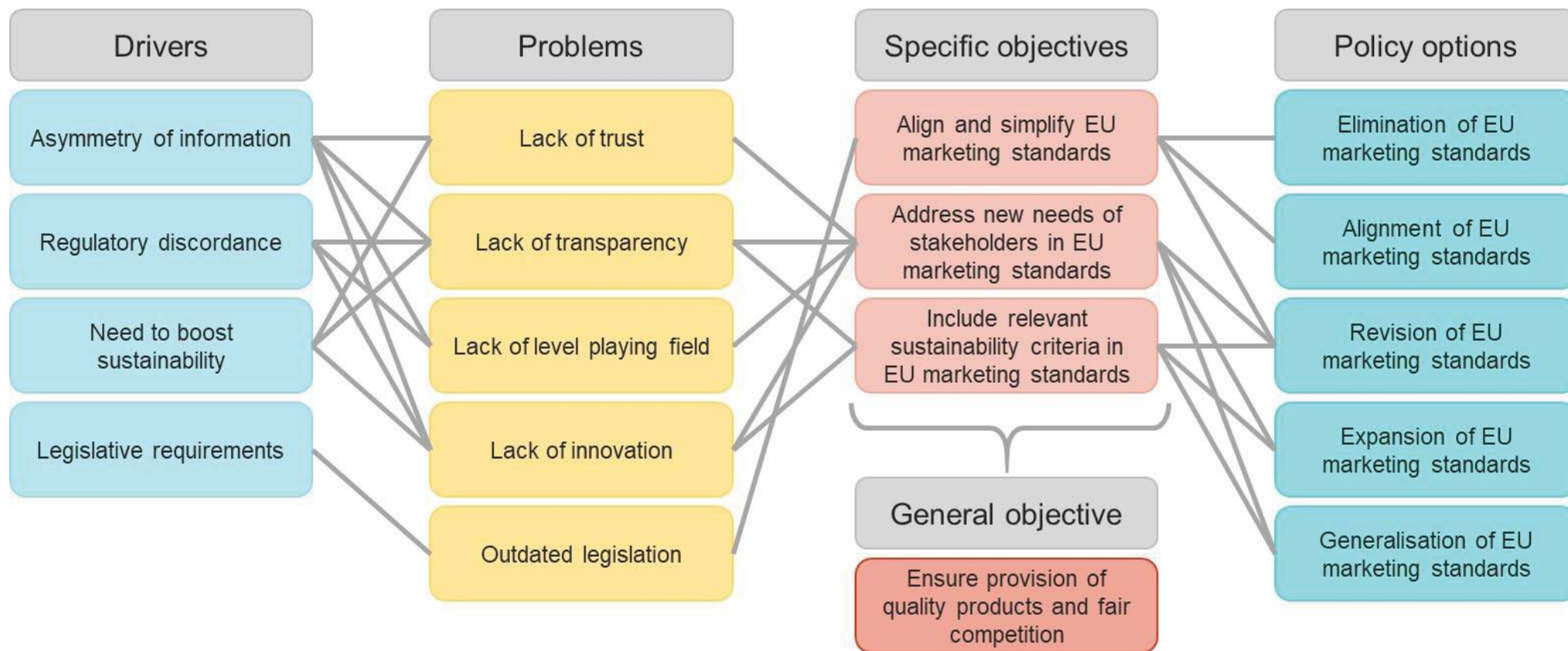
In particular the use of single-use plastics for packaging fresh F&V will be addressed by this initiative, i.e. this aspect does not need to be discussed in this IA as it will not be covered in the context of the F&V marketing standards.

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<sup>231</sup> <https://europa.eu/!KMRg3W>.

## ANNEX 7: ILLUSTRATION OF THE INTERVENTION LOGIC

Figure 26: Intervention logic for the revision of EU marketing standards



## ANNEX 8: STRATEGIC FORESIGHT FOR THE REVISION

The Commission services organised a workshop on ‘Megatrends Analysis for the Impact Assessment: How to ensure quality and sustainability in the food supply chain in future – what role for marketing standards?’ that took place on 27 October 2021 with participants from DG AGRI, DG SANTE and the JRC.

At the workshop, participants mapped megatrends according to their relevance and related knowledge, and identified and discussed consequences and policy implications. The most relevant megatrends were climate change and environmental degradation, growing consumerism, shifting health challenges, aggravating resource scarcity, and accelerating technological change and hyperconnectivity, while awareness and knowledge on the latter is less developed (Figure 27).

The implications of climate change and resource scarcity were identified to be:

- more frequent shocks to supply chains
- greater vulnerability to shocks
- increasing prices
- decreasing quality
- growing market imbalances
- increasing pressure on producers to become more diversified

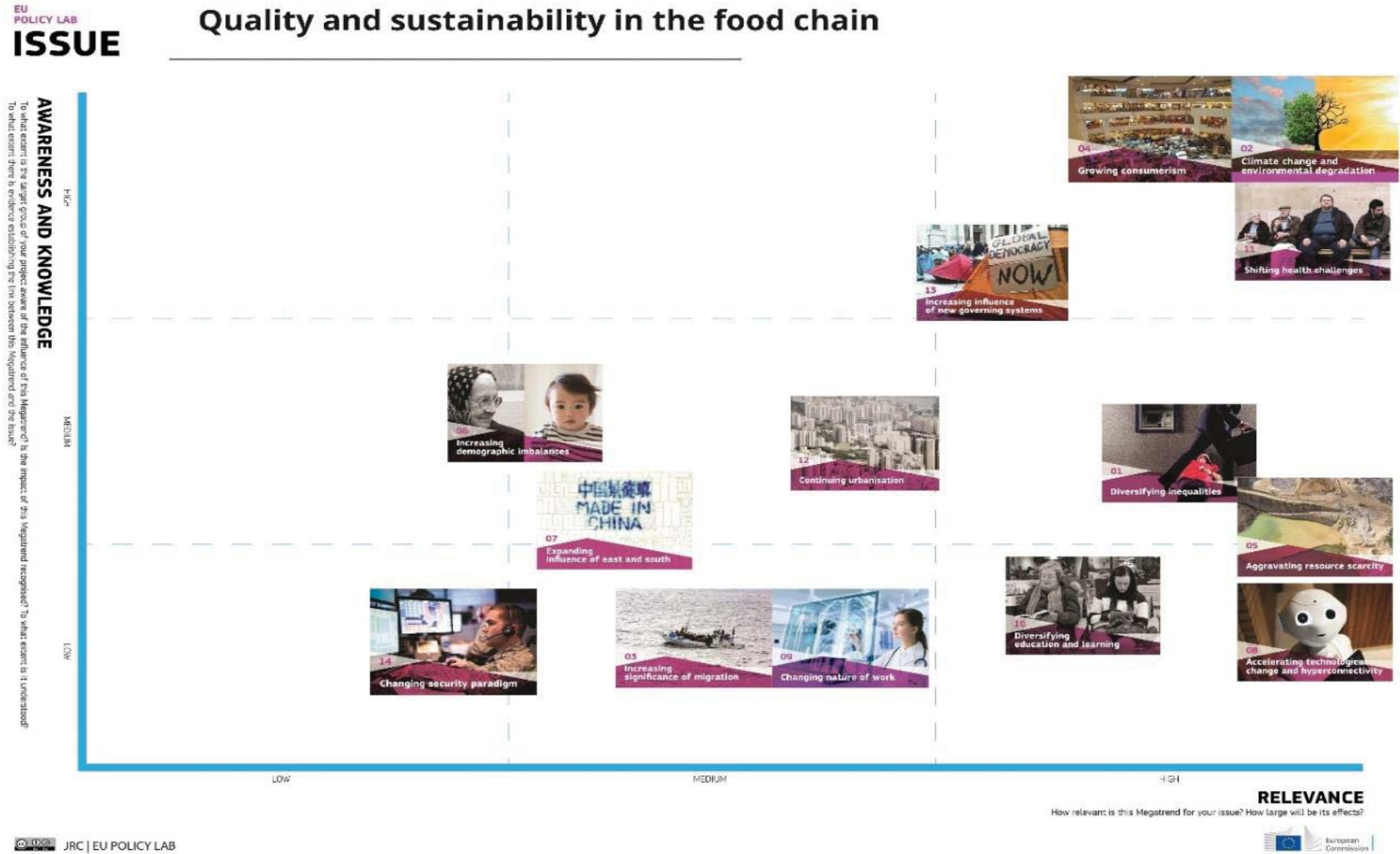
Those of consumerism and health challenges were identified to be:

- growing demand for functional/superfoods<sup>232</sup>
- development of more niche markets and greater market segmentation
- increasing confusion about quality and what is healthy
- growing brand activism
- growing pressure on companies to increase transparency
- deteriorating public health requiring more government actions and affecting the availability and cost of health services
- growing importance of countries in other world regions (Asia, Africa), with food supply chains focusing more on these markets

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<sup>232</sup> Functional foods are foods that contain one or more added ingredients to provide a positive health benefit. Superfoods are foods that have a very high nutritional density.

Figure 27: Mapping of megatrends for the revision of EU marketing standards



In terms of implications of these megatrends for marketing standards and their effects on stakeholders, the participants suggested the following points:

- Marketing standards have to be simple to understand and stable in a changing world.
- The standards have to give assurance, but given that expectations change they cannot be stable in the absolute but need to keep changing, too.
- Marketing standards should be simple but informative and reliable.
- The standards should reflect European values and build a common understanding.
- They could use digital tools in business-to-business and business-to-consumer interactions.
- Marketing standards should be created with consumer input.
- The standards should take into account their impact on inequalities.
- They should be made fit for new, future food sales channels.

## **ANNEX 9: OTHER SECTORAL INITIATIVES**

Annex 9 covers revisions of marketing standards for which only minor changes are considered, for which there are no actual policy choices, no real significant impacts, or which are technical and not politically sensitive (e.g. minor revisions to adjust marketing standards based on stakeholder feedback or revisions due to legal requirements). For these revisions, it would be disproportionate to carry out a comprehensive analysis; this annex therefore presents the key considerations taken into account for the proposed revision. The five initiatives for which clearly distinct policy options could be identified are covered in Section 10.

### **A. HORTICULTURAL PRODUCTS**

#### *1. Grouping existing fruit & vegetables legislation*

The marketing standard rules on F&V and bananas in the existing secondary regulations were never aligned to the Lisbon treaty and the empowerments in the CMO regulation as reviewed in 2013. Moreover, they are dispersed in different legal acts.

The revision of some of these legal acts, which is necessary for the introduction of some of the changes presented in the next sub-sections (2 to 5), requires their alignment to the Lisbon Treaty. This would be an opportunity to bring into one consolidated legal text the dispersed rules for these products, thus contributing to their simplification and harmonisation. In practice, this would mean merging three different regulations on marketing standards concerning bananas, dried grapes and other F&V (fresh, processed).

The merging of the different rules into a single text is a technical change with the benefits of simplifying the presentation of the legislation and the access to it by stakeholders for a similar set of products.

## 2. *Extending origin labelling to some F&V products that are currently exempted*

The current rules on marketing standards for F&V, contained in Commission Implementing Regulation 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the F&V and processed F&V sectors (the “F&V Regulation”) exempt certain nuts (both in-shell and kernels, and their mixtures), dried fruits, mushrooms, capers and saffron from the application of the general marketing standard<sup>233</sup>. Except for some basic requirements (sound, clean, free of pest damages, free of foreign smell, etc.), the general marketing standard – from which these products are exempted - requires identification of the packer and/or dispatcher and of the country of origin on the label of the product. Nonetheless, the labelling of the origin is of growing interest for the consumer and should be increased to allow for an informed choice.

MSs producing nuts and dried fruits argue that such an exception is obsolete and should be removed in particular for nuts. Some of these products witness positive production and consumption trends (nuts). Having said this, their production share of the fruit and vegetable sector remains small. The EU nuts and similar fruits volume of production accounted for 1.1 million tonnes in 2019<sup>234</sup>. The share of this sub-sector accounts for about the 5.3% of the total intra EU trade value for fresh F&V<sup>235</sup>. For example, Spain is the main producer of almonds (shelled or in-shell) in the EU<sup>236</sup> and it exports a share of 55% of the total intra EU trade. In 2021, approximately 299 thousand tonnes of shelled almonds were imported into the EU (for the large majority from the USA), and 19 thousand tonnes were exported (mostly to the UK, Switzerland and the USA).

The removal of the exception for nuts and dried fruits would have some impact for the administration in terms of control, although these already have to take place on other aspects, but can be considered a technical change – aligning rules for these niche products with the rest of F&V. The single change of this removal would be that the origin labelling rules would apply to these exempted products, including nuts, dried fruits, capers and saffron, as requested by certain MSs<sup>237</sup>. This would be a simple alignment with the rules for other F&V. Like for fresh F&V, it would apply equally to EU MSs and third countries<sup>238</sup>. Such a change could improve transparency for consumers, who have increasing choice in the market of products including as regards the geographical origins. A change could therefore help consumers take more informed decisions. To the extent that this encourages the consumption of nuts and dried fruits as an alternative to less wholesome snacks, it may also contribute to better nutrition.

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<sup>233</sup> Article 4(6) of Regulation (EU) No 543/2011.

<sup>234</sup> <https://www.fao.org/faostat/en/#data/FBS>.

<sup>235</sup> Comext data, 2021.

<sup>236</sup> With 356 thousand tonnes in 2021, Spain produced roughly 70% of the total EU almond production.

<sup>237</sup> As cited in the previous section, notable ES and IT, which are the two main EU producing MSs of nuts.

<sup>238</sup> Article 7(3) of Regulation (EU) No 543/2011 would be applicable to these products as well in the case of mixes: “If the products in a mix originate in more than one Member State or third country, the full names of the countries of origin may be replaced with one of the following, as appropriate: (a) ‘mix of EU fruit’, ‘mix of EU vegetables’ or ‘mix of EU fruit and vegetables’; (b) ‘mix of non-EU fruit’, ‘mix of non-EU vegetables’ or ‘mix of non-EU fruit and vegetables’; (c) ‘mix of EU and non-EU fruit’, ‘mix of EU and non-EU vegetables’ or ‘mix of EU and non-EU fruit and vegetables’.”



For public authorities the change would create consistency concerning the application of the marketing standards to F&V.

As regards economic operators and trade, the overall impact is expected to be marginal (adapting the labelling) or even beneficial (opportunity to put forward a new selling feature).

### 3. *Trimmed and cut fruit and vegetables*

Stakeholders and MSs have repeatedly asked for more clarity concerning the labelling of origin of ‘ready to eat’ and ‘kitchen ready’ fruit and vegetables (F&V). These are for example sold as sliced and pre-packed products. The Commission has been pointing out that the general principle set by the CMO is that F&V may only be marketed if the country of origin is indicated.<sup>239</sup> However, stakeholders continue to ask for clarification. It seems that the relevance of this general principle for the said products is unclear. Operators also argue that the current rules are difficult to apply in practice.

Most of the confusion seems to be caused by the fact that the terms ‘ready to eat’ and ‘kitchen ready’ are not defined in the current regulation<sup>240</sup>.

A solution would be to redraft the relevant provision<sup>241</sup> by removing the references to the terms ‘ready to eat’ and ‘kitchen ready’ and clarify that products having undergone trimming and cutting should conform to the obligation to indicate the country of origin.

On top of the clarification for stakeholders and administrations, the benefits of this change would be an increased transparency for operators and consumers to make an informed choice. Some operators sourcing their raw materials from different origins would prefer to remove the obligation to indicate the origin for these products. While of course these would ensure them more flexibility, this change would be to the detriment of consumer’s informed choice and stand ill against the general marketing standard principle.

Despite the fact that this clarification is rather technical in nature, it would bring benefits for most of operators, mainly SMEs, consumers, and rural areas. Most of the facilities preparing ready to eat solutions are located close to production areas. They are often owned by producer organisations<sup>242</sup>. As such, they are a source of value added for rural areas and farmers. Moreover, aligning the rules for ‘ready to eat’ F&V to those

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<sup>239</sup> Annex 1, Part A.4(B) of Commission Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors, [http://data.europa.eu/eli/reg\\_impl/2011/543/2021-11-15](http://data.europa.eu/eli/reg_impl/2011/543/2021-11-15).

<sup>240</sup> The term is however used and defined in Regulation (EC) 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs, article 2(g): “‘ready-to-eat food’ means food intended by the producer or the manufacturer for direct human consumption without the need for cooking or other processing effective to eliminate or reduce to an acceptable level micro-organisms of concern”. *OJ L 338, 22.12.2005, p. 1*, <http://data.europa.eu/eli/reg/2005/2073/oj>. In addition, in Regulation (EC) 1333/2008 of 16 December 2008 on food additives, annex II, Part D, there is a reference to unprocessed fruit and vegetables, which are listed as including both “entire fresh fruit and vegetables” and “peeled, cut and shredded fruit and vegetables”, in addition to “frozen fruit and vegetables”. *OJ L 354, 31.12.2008, p. 16*, <http://data.europa.eu/eli/reg/2008/1333/oj>.

<sup>241</sup> Article 4(1)(d) of Commission Regulation (EU) No 543/2011.

<sup>242</sup> For example <https://florette.fr/qui-sommes-nous/>.

applicable to the other products would put an end to situations where F&V mixes in the same packaging contain products that must comply with different rules, making it easier in particular for SMEs to apply them. More transparency on the labelling may also encourage more consumption of F&V.

#### 4. *'Ugly' fruit and vegetables*

Fruit and vegetables characterised by aesthetic defects are sometimes referred to as 'ugly'. They may be misshapen, undersized or have colour defects. They do not, therefore, conform to the F&V marketing standards (sound, fair and marketable).

Under the F&V Regulation, products that do not conform to the marketing standard can be used for industrial processing.<sup>243,244</sup> MSs can also decide that such 'ugly' F&V can be marketed to consumers subject to certain conditions: either they are labelled as 'intended for processing' or sold directly by producers to the final consumer on farmers' markets.<sup>245</sup> According to the industry and retailers, the market for 'ugly' F&V is a niche market and consumer demand for such products is at this stage rather limited.

The defects of 'ugly' F&V make them unsuitable for packaging and/or transport on long distances. Such defects are not only cosmetic but may affect the capacity of the products to resist decay or make them unfit to be properly arranged and packed to avoid shocks and bruises. In addition, because of their defects their prices are lower.

Therefore, it would seem that valorising 'ugly' F&V in their fresh state would be most promising in the context of local sales and supply chains without long ways of transport. In order to facilitate such an approach, the existing derogations in the F&V Regulation could be reinforced. For instance, it could be stipulated that there should be not more than one intermediary between producer and consumer. In addition, the existing derogations in Articles 4(3) and 4(4) of the F&V Regulation could be set at the EU level, instead of leaving the decision at the discretion of the MSs.

The changes regarding the derogations in the F&V Regulation are unlikely to have a substantial effect. They would bring benefits for every actor involved. They could reduce food waste, offer consumers more opportunities to buy F&V at more affordable prices, and benefit SMEs including producer organisations active in short supply chains. To the extent that 'ugly' F&V are sold cheaper and lead to the consumption of more F&V, a positive impact can be expected for nutrition. As for public authorities, the easing of rules may benefit them slightly. Trade is not expected to be affected in any significant way, not least because 'ugly' F&V are rarely transported over long distances.

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<sup>243</sup> F&V that have defects with consequences for their organoleptic qualities (blemishes, decay, severe attacks of pests affecting the inner quality of the product, etc.) cannot be marketed at all.

<sup>244</sup> Article 4(1)a(i) of Commission Regulation (EU) No 543/2011, [http://data.europa.eu/eli/reg\\_impl/2011/543/2021-11-15](http://data.europa.eu/eli/reg_impl/2011/543/2021-11-15).

<sup>245</sup> Articles 4(3) and 4(4) of Commission Regulation (EU) No 543/2011 allow MSs to derogate from minimum quality requirements if products are sold to consumers for their personal use and intended for processing or if they are sold locally by producers.

## 5. *'Force majeure' exemption*

The recent eruption of the volcano on La Palma rendered the bananas grown non-compliant with the EU marketing standard<sup>246</sup> due to the ash layer covering the fruit. This suggested the desirability to have the possibility to derogate in exceptional situations from the otherwise applicable marketing standards<sup>247</sup>.

Producers that face exceptional circumstances not imputable to their behaviour ('force majeure') suffer economic hardship if their F&V produce cannot be sold while the impact on the product may only be a cosmetic one, as was the case in Spain. The possibility to grant exemptions would provide the possibility to avoid this loss of income and product. The work of public authorities would be facilitated as controls would take into account such exemption. Consumers may find more temporarily 'irregular' products on the market, but due to the exceptional circumstances they are expected to be aware and willing to support producers by accepting such F&V on a temporary basis. Finally, food waste would be prevented.

## 6. *Sugar content in fruit nectars*

'Fruit nectar' is the sales designation for beverages with 25-99% juice content. Under the Juice Directive, only 'fruit nectars' may contain added sugar and/or sweeteners.

As explained in Section 10.2 on reduced-sugar fruit juice, from a health point of view, the total free sugar content is relevant. For fruit juice and fruit nectar, this means the total sugar content as all sugars that nectar may contain (sugars from fruit juice, added sugars including honey etc.) count as free sugars. Therefore, the total sugar content is the health relevant information for consumers and this is available in the mandatory nutrient labelling.

However, in addition to the difference on ingredients, fruit juices and fruit nectars have different front-of-pack labelling possibilities. Products sold as 'fruit juices' or 'fruit juice from concentrate' cannot contain added sugar and thus, they cannot use the claim 'no sugar added' or 'contains naturally occurring sugars'<sup>248</sup>, whereas products sold as 'fruit nectars' can<sup>249</sup>. Moreover, when sugar or sweetener is added to a nectar, as for all

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<sup>246</sup> Commission Implementing Regulation 1333/2011 laying down marketing standards for bananas, rules on the verification of compliance with those marketing standards and requirements for notifications in the banana sector, OJ L 336/23.

<sup>247</sup> For the concept of force majeure see e.g. C 640/15, Vilkas, EU:C:2017:39, paragraph 53, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=187124&doclang=EN>.

<sup>248</sup> In accordance with Regulation (EC) No 1924/2006 of the European parliament and of the council of 20 December 2006 on nutrition and health claims made on foods: "WITH NO ADDED SUGARS A claim stating that sugars have not been added to a food, and any claim likely to have the same meaning for the consumer, may only be made where the product does not contain any added mono- or disaccharides or any other food used for its sweetening properties. If sugars are naturally present in the food, the following indication should also appear on the label: 'CONTAINS NATURALLY OCCURRING SUGARS'."

<sup>249</sup> The authorised ingredients of fruit nectars are defined in Annex 1, part II, section 2 of the Juice Directive as follows: "restored flavour, pulp and cells; sugars and/or honey up to 20 % of the total weight of the finished products; and/or sweeteners; A claim stating that sugars have not been added to fruit nectar, and any claim likely to have the same meaning for the consumer, may only be made where the product does not contain any added mono- or disaccharides or any other food used for its sweetening properties, including sweeteners as

labelled foods, there is no correlated obligation to feature it as part of the front-of-pack nutrition label, only in the mandatory ingredient list. Over time, this has created consumer confusion, in particular that consumers think that fruit juices can or do contain added sugar, and so misleading consumer choices<sup>250</sup>. In addition, research has however shown that among several products with identical nutrition composition, the product with a nutrition claim would be preferred<sup>251</sup>.

While the fruit juice producing sector would like to be able to communicate that ‘fruit juice’ contains ‘no added sugar’ or only ‘naturally occurring sugars’<sup>252</sup>, this is prevented by the current European legal framework on consumer information that stipulates that ‘food information shall not be misleading, particularly [...] by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics, in particular by specifically emphasising the presence or absence of certain ingredients and/or nutrients’<sup>253</sup>.

In order to reduce the risk of consumer confusion and with a view to helping consumers to make better informed, healthy food choices, it seems therefore appropriate to adapt the front-of-pack labelling possibilities for fruit juices and fruit nectars in the Juice Directive.

In 2012, the Juice Directive was amended and the addition of sugars was no longer authorised in fruit juices. In the light of this change of compositional requirements for fruit juices, the fruit juice industry was allowed to use, for a limited time, the following statement: “no fruit juices contain added sugars”. The objective was to inform consumers and enable them to make an immediate clear distinction between fruit juices and other drinks in terms of the addition of sugars in the products. The time-span authorised proved insufficient, as for a proportion of consumers, it is still not clear that fruit juices do not contain added sugars. It is therefore appropriate to renew the possibility for the industry to communicate to consumers on this aspect.

As regards nectars, in view to incentivising consumers to make informed food choices based on the relevant nutrient information, it is proposed that the nutrition claims regarding sugar content that can be made on the products covered by the Juice Directive

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defined in Regulation (EC) No 1333/2008. If sugars are naturally present in fruit nectar, the following indication should also appear on the label: ‘contains naturally occurring sugars’.”

<sup>250</sup> According to the AIJN surveys, in Germany, 43% of interviewed nutritionists believe that orange juice contains added sugar. In Belgium only 22% of Dutch – speaking respondents are convinced that it is not allowed to add sugar to 100% fruit juice. The French-speaking part of Belgian dieticians score better, with 51% of respondents knowing it is not allowed – however this still leaves a remaining 49% without knowledge of this legislation. Danish clinical dieticians were asked the same question, and although 66% of them do know that there is no sugar added to fruit juices, one third believes that there must be artificial sweeteners inside the product. Approaching consumers, surveys in France show that 61% of interviewed people believe there is added sugar in the pre-packed orange juice. In the Netherlands the percentage of consumers with the same opinion is 62%. In Poland, over 76% of consumers (representative group of mothers, as per study Promotion of Certification of Innovative Processed F&V, IQS Sp. z o. o., December 2018, CAWI study, mother of children aged 3-18) believe that fruit juice may contain added sugar or sweeteners.

<sup>251</sup> Steinhauser J, Janssen M, Hamm U. Who Buys Products with Nutrition and Health Claims? A Purchase Simulation with Eye Tracking on the Influence of Consumers' Nutrition Knowledge and Health Motivation. *Nutrients*. 2019 Sep 12;11(9):2199. doi: 10.3390/nu11092199. PMID: 31547369; PMCID: PMC6769812.

<sup>252</sup> AIJN contribution of 9 December 2021.

<sup>253</sup> Article 7(1)(c) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers.

be simplified and harmonised. Concretely, nectars should be able to continue using the nutrition claim “with no added sugars”, and only that claim, when they contain only naturally occurring sugars and no added mono- or disaccharides or any other food used for its sweetening properties, including sweeteners as defined in Regulation (EC) No 1333/2008.

The overall impact on the economic sector is foreseen to be rather small, as operators should move within the same market segment changing some of their factors of competitiveness, such as recipes (towards healthier ones), price, taste and other health claims; these adjustments mainly concerning only the operational capital should be rather quick and not too costly to implement.

Public authorities are supposed to be minimally impacted, as despite this change in rules the type and number of their controls will hardly change, as they are already based on a risk analysis for all marketing standards<sup>254</sup>. As regard consumers, the gains are rather evident in terms of transparency, and as a consequence in terms of ease to make the healthier choices when choose a fruit-based drink, with positive effects for social health.

To conclude, adapting the nutritional claims regarding sugar content on the front-of-pack label for fruit juice and nectars mainly aims to counterbalance the competitive advantage of which fruit nectars benefit when it comes to health claims compared to fruit juices and reduce the risk of consumer confusion regarding the presence of added sugars, with positive effects for consumers and little overall effects for the sector.

This is coherent with the current FIC Regulation and its ongoing revision, which covers all products sold for consumer consumption and does not provide for specific rules regarding fruit juices, which are thus contained in the Juice Directive. The revision of the FIC Regulation will cover front-of-pack labelling (scoring) and nutrient profiles, and not nutritional claims. The change does derogate from the nutritional claims regulation (for which no revision is foreseen in the near future). It is considered necessary so that operators may better inform consumers about the actual source of sugar contained in fruit juices (if operators choose to use the authorised sentence on their labels) and that operators may use harmonised sugar claims in their marketing strategies for nectars, in line with the objectives defined in the F2F Strategy to facilitate the shift to healthy diets and to empower consumers to make informed and healthy food choices.

## 7. *Use of the term ‘marmalade’*

As regards the sales designations for jams, the Jam Directive<sup>255</sup> restricts the term ‘marmalade’ to citrus fruit mixtures. However, in a number of European languages the term ‘marmalade’ had traditionally been used as a generic term for jams of all fruits.

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<sup>254</sup> Article 90a(3) of 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: “Member States shall carry out checks, based on a risk analysis, in order to verify whether the products referred to in Article 1(2) conform to the rules laid down in this Section and shall apply administrative penalties as appropriate.”

<sup>255</sup> Article 2 and Annex I of Council Directive 2001/113/EC relating to fruit jams, jellies and marmalades and sweetened chestnut purée, <http://data.europa.eu/eli/dir/2001/113/2013-11-18>.

There has been a growing number of calls to adjust the rules on the use of the term accordingly<sup>256</sup>.

So as to take into account its traditional understanding in many EU languages, the marketing standards revision would consist in adding in the Jam Directive a derogation to allow MSs to authorise that the term ‘marmalade’ can be used to designate what today, under the Jam Directive, are jams. This would promote consumer information and trust in certain MSs where variations of the term ‘marmalade’ have been traditionally used<sup>257</sup>.

What is currently designated as ‘marmalade’ in the EU would have to be designated as ‘citrus marmalade’ according to the international standard (Codex Alimentarius) and it would be up to the MSs to regulate how the term ‘marmalade’ could then be used. By aligning the EU standard with the international standard, the designations for the sector would be simplified<sup>258</sup> and this would remove the need for specific interpretations and exceptions<sup>259</sup>.

This revision is therefore technical, as it will mainly concern the response to derogation requests to the current EU legislation from different national legislations and align the EU rule to existing international standards. The economic impact foreseen for operators, public authorities and consumers, would be limited as the use (decided by a MS) would be allowed by the change to the Jam Directive but not mandated; also, some MSs already have a derogation for the use of the term ‘marmalade’.

## **B. ANIMAL PRODUCTS**

### *1. Dual use of outdoor areas in free-range production systems for eggs*

About 12% of the EU laying hens produce in free range systems that allow daytime access to open air runs. Free-range production is particularly strong in Ireland (43% of the hens), Austria (27%), France (23%) and Germany (21%). Under the current egg marketing standards, using the outdoor runs in free-range production systems for other purposes than that for orchards, woodland or livestock grazing is not allowed.

There is increasing interest to allow the installation of solar panels in the outdoor area, which can not only improve the economic and environmental performance of farms through the generation of income and production of renewable energy, but also serve as shelter for hens (protecting them from the sun or, especially, birds of prey).

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<sup>256</sup> See Bulgaria’s notification regarding rosehip marmalade (N° 2021/579/BG), EP question of 7 March 2017 E-001555-17, Petition No 0001/2021 by M.P. (German) on Council Directive 2001/113/EC relating to fruit jams, jellies and marmalades and sweetened chestnut purée, direct citizen enquiry of 6 January 2021 ref 101000763451.

<sup>257</sup> See, e.g., Parliamentary question for written answer E-001555-17 of 7 March 2017, Jakob von Weizsäcker (S&D): ‘In Great Britain the term ‘marmalade’ is used for fruit spreads which, aside from sugar and water, only contain citrus fruits — unlike in Germany or Austria where the name is traditionally also used for strawberry, plum and various other ‘marmalades’. To avoid overwhelming our British friends, the term has been used exclusively for citrus fruit marmalades throughout the EU since 1979 — to the disappointment of consumers, particularly in Germany and Austria, who since then have only been able to buy fruit spread or jams instead of normal marmalade.’

<sup>258</sup> Codex Alimentarius makes a distinction between citrus marmalade (which corresponds to marmalade as defined in the Directive) and non citrus marmalade.

<sup>259</sup> Council Directive 2004/84/EC, Annex I, fn 1, <http://data.europa.eu/eli/dir/2004/84/oj>.

Making the marketing standards more flexible would allow operators generate additional income for and stimulate the production of ‘green’ energy; it will also reduce the burden that controlling and enforcing strict standards impose on public authorities. There is no direct impact on consumers, but greater supply of energy from renewable sources is of interest to them.

The overwhelming majority of free-range egg producers are SMEs. A more flexible use of open-air runs for creating additional income (from solar energy) would improve the economic situation of these SMEs that are often located in rural areas. In turn, this can allow them make other investments that improve their competitiveness.

There are positive impacts in relation to animal welfare. Solar panels installed in open air runs can serve as additional shelter so that the outdoor area is more attractive to the hens. The animals move also further away from the barn into the now more protected free-range area<sup>260</sup>.

In several MSs, there is strong interest to authorise solar panels in free range areas<sup>261</sup>. This became clear in the consultations when the issue was highlighted from the producer side but also from the side of public administration. It is a long standing issue and had already been addressed in a parliamentary question in 2019 (E-004596/19).

It is therefore proposed to amend the marketing standard and authorise solar panels in free range areas. It is a technical amendment, largely undisputed and with clear economic, social and environmental benefits.

## 2. *Inconsistency between egg standards and organic rules*

Highly Pathogenic Avian Influenza is a disease that appears every winter in the EU. It is transmitted by migratory birds. In order to avoid outbreaks in domestic holdings, veterinary authorities can impose housing orders on poultry (for example in case of Avian Influenza outbreaks in their vicinity). By derogation, the eggs of free-range hens and organic hens are continuing to be marketed as ‘free-range’ and ‘organic’ even if the hens had no access to open air runs.

There is an inconsistency between egg standards and organic rules concerning derogation for the period during which producers of ‘free range’ eggs can keep their ‘free range’ status in the event of prolonged veterinary housing orders.

According to the egg marketing standards, free range egg producers can preserve their ‘free range’ status and label eggs as ‘free range’ for a period of maximum 16 weeks during which hens can be kept indoors based on veterinary orders. After 16 weeks the eggs can only be marketed as ‘barn eggs’ at a ~50% lower price. However, such period of derogation is of unlimited duration under the EU organic rules (cf. Regulation (EU) 848/2018, Annex II, point 1.9.4.4.(d))<sup>262</sup>).

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<sup>260</sup> <https://doi.org/10.5713/ajas.2011.11051>.

<sup>261</sup> <https://poultry.network/3019-solar-panels-not-acceptable-on-free-range-farms-eu-says/>.

<sup>262</sup> <http://data.europa.eu/eli/reg/2018/848/oj>.

Aligning the provisions in the egg marketing standard would abolish an unjustified competitive disadvantage of non-organic free range egg producers versus organic ones.

Due to the economic losses, players in the egg sector often approach public authorities and lobby for a lifting of the veterinary restrictions before the 16 weeks limit has been reached, even if the disease is still present in wild birds in the area. If the derogation in the egg marketing standard would be aligned with the already existing derogation under organic rules, equal treatment of producers would be ensured.

The impact on consumers would be that they would buy free range eggs from hens that have no outdoor access (the same as organic) during veterinary restriction, even if it lasts longer than 16 weeks. However, already during previous epidemics retailers used voluntary labelling to allow consumers to support egg producers by paying a higher price for free-range eggs that have been produced without access to open-air runs<sup>263</sup>.

Free range egg producers are mainly SMEs in rural areas, which suffer from economic losses under the current inflexible rules.

Currently there is discrepancy between ‘free range’ and ‘organic’, two farming methods that have a high public acceptance, first and foremost because of an animal welfare friendly production. Respecting veterinary restrictions is in the interest of the society, and such alignment would reduce the incentive of farmers to obtain lighter veterinary orders in the name of economic considerations. The health of the animal needs to be weighed against the ability of the animals to move freely outdoors when there is a high risk to be infected by diseases such as avian flu. Both animal welfare friendly production methods (free range and organic) should be treated in the same way in relation to derogations linked to veterinary restrictions.

Aligning the rules for ‘organic’ and free range eggs contributes to more coherent consumer information, but allowing hens to be kept indoors whose eggs can be labelled ‘free range’, even if for veterinary reasons, may mislead consumers.

MSs apply different administrative practices and interpretations in relation to the current rules so that the Commission is frequently asked for clarification<sup>264</sup>. The discrepancy between marketing standards and organic rules leads to unequal treatment of producers under veterinary restrictions. Stakeholders highlighted this unequal treatment in the public consultation. Public authorities are increasingly confronted with lack of understanding of this unequal treatment<sup>265</sup>. This makes enforcement extremely difficult.

Revising the current standard would allow aligning derogations between free-range and organic, both production systems that are generally regarded as sustainable. We see this as a technical amendment without political controversy.

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<sup>263</sup> <https://verbund.edeka/presse/pressemeldungen/edeka-zeigt-solidaritat-mit-geflugel-haltern.html>.

<sup>264</sup> Letter from Germany.

<sup>265</sup> Letter from Germany.



### 3. *Durability of eggs*

Minimum durability of food in general is regulated in FIC. In addition, the egg marketing standard fixes a maximum limit of 28 days for *minimum* durability ('best before' date) of shell eggs (Article 13). This leads to food waste because some consumers may throw eggs away after the 28 days.<sup>266</sup>

Food business operators are free to guarantee minimum durability for any kind of foodstuff and should be free to grant also more than 28 days for eggs (under optimum storage conditions eggs can keep their quality for several months). Food safety aspects fall not within the scope of marketing standards. In relation to eggs they are fully covered by Regulation (EC) No 853/2004 that fixes the sell-by-date at 21 days after laying (Annex III, Section X (3))<sup>267</sup>. Possible consumer confusion about the sell-by-date could be addressed in a separate action under the F2F (No 27).

Eggs are the only example where marketing standards define maximum limits for minimum durability. The provisions were established long time before Regulation (EU) No 1169/2011 came into force. By removing the provision in the marketing standards operators would be free to define the minimum durability in the same way as for any other product based on horizontal rules for food labelling and date marking based on a risk based approach in line with EFSA guidance (Guidance on date marking and related food information<sup>268</sup>).

The abolition of the 'best before' date in the marketing standard for eggs is a technical adjustment and will align the egg sector with horizontal rules on date marking under the FIC regulation. This will put eggs in line with all other food products.

### 4. *Obligatory marking of eggs on the farm*

In accordance with current egg marketing standards eggs can be marked either on farm or at later stages at packing centres. If done at packing centres, a certain risk of false marking (unintended or intended) cannot be excluded entirely, because eggs from different farms and production systems may be mixed up and mislabelled.

Obligatory marking of eggs on the farm is an option already in place in several MSs (NL, BE, AT and DE). On the other hand, some MSs have well established systems in place to mark eggs in the first packing centre (e.g. DK and FI), and their official control procedures have been designed to work well at the level of packing centres. There is no impact on imports, EU import rules do not regulate the place of marking.

It is, therefore, foreseen to introduce obligatory marking of eggs on farm as general rule but maintain the option to mark eggs in packing centres by way of derogation by the competent authorities.

Compulsory marking on farm as general rule would improve traceability of eggs, also in the event of food safety incidents by allowing the identification of eggs coming from

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<sup>266</sup> <https://www.theguardian.com/food/2019/apr/09/britons-throw-away-720m-eggs-a-year-over-best-before-date-fears>.

<sup>267</sup> <http://data.europa.eu/eli/reg/2004/853/oj>.

<sup>268</sup> <https://doi.org/10.2903/j.efsa.2020.6306>.

individual farm holdings. In justified cases, the legislation would allow for a derogation to the subsequent stage of supply chain (packing centre) taking into account the situation in MSs that developed a well-functioning labelling system in packing centres.

Marking of eggs is laid down in Annex VII to Regulation (EU) No 1308/2013. Due to this special legislation marking of eggs would not fall under Regulation 1069/2011 on food information to consumers.

#### 5. *Optional reserved terms to label types of farming in poultrymeat production*

The current marketing standard for poultrymeat defines certain optional reserved terms (ORTs) for informing consumers about farming methods.

ORTs are established according to Article 84 of Regulation (EU) No 1308/2013 in order to make it easier for producers of agricultural products that have value-adding characteristics or attributes to communicate those characteristics or attributes within the single market.

The current system of optional reserved for poultrymeat is, however, not flexible enough for labelling new farming methods. The current marketing standards allows only a few clearly defined ORTs. No other product information is possible.

Detailed rules on the ORTs relating to poultry are provided in Articles 11-14 and Annex V of Commission Regulation (EC) No 543/2008. The following ORTs are defined to indicate on the label the respective ‘type of farming’ in poultry (with the exception of organic farming which is defined in the organic farming rules).

- a) ‘fed with ...% ...’;
- b) ‘extensive indoor’ (‘barn-reared’);
- c) ‘free range’;
- d) ‘traditional free range’;
- e) ‘free range – total freedom’.
- f) ‘oats-fed goose’.

These provisions represent a rather rigid framework for the marketing of poultrymeat. Indeed, the marketing standard stipulates that no other terms except those set out in the Regulation may appear on the labelling.

Therefore, the use of other terms indicating other types of farming at national level, falling outside the scope of the terms defined above, should be allowed, if those terms are not misleading consumers.

The main shortcoming raised by many stakeholders is that the rules are excessively rigid and lacking the flexibility needed to promote product innovation and a mechanism to promote additional credence attributes to the consumer. For example, the inability to add a label indicating ‘no use of antibiotics’ or the lack of provisions for ‘in-between’

production systems (e.g. ‘Chicken of tomorrow’<sup>269</sup>, ‘Privathof’<sup>270</sup>), that are above baseline but not to the level of the listed ORTs, are also raised.

Increased flexibility of ORTs can make production systems viable that deliver higher level of animal welfare or health than the baseline level. The flexibilisation of ORTs could facilitate also the labelling of more environmentally friendly farming methods than current minimum standards.

#### 6. *Limits for water content in poultry*

The EU marketing standard provides for a limit on the total water content in frozen poultrymeat. Poultry meat that exceeds the water content limit can only be sold with a clear indication ‘water content exceeds EU limit’. In practice, such meat is therefore not used in retail sales but for further processing and food services.

Water content limits are controlled at slaughterhouse level at set frequencies. The marketing standard should be amended to allow risk based controls. This would allow higher control frequencies where shortcomings have been detected and reduce administrative burden in establishments with a high degree of compliance.

Currently the marketing standard foresees two test procedures to determine the water content of poultry meat: a chemical test and a simple drip test. Due to unreliable results the drip test should be abolished.

Furthermore, the current marketing standard contains inconsistencies in relation to the applicability of test procedures for frozen and fresh poultry. This had been highlighted in an EU funded study on water content of poultry<sup>271</sup>.

Apart from the listed technical amendments it is foreseen to maintain the legal limits for water in the poultry marketing standard, even if their modification is controversially debated. Both, the physiological (intrinsic) water and the added water count against the water limit of the standard. The rationale of the water limit is that consumers should not be incited to buy chicken that contains a lot of (invisible) water that evaporates when cooked and leaves the product significantly smaller than it appeared to the consumer at first glance. This policy context implies that alternative options are not relevant.

The actual purpose of the limit was to prevent water from being *added*. Given the lack of suitable technical methods to distinguish between intrinsic and added water, the limit is based on the *total* water content. However, production methods changed and faster growing breeds are now used; those birds have a shorter life span at slaughter and contain more intrinsic water than slower growing breeds<sup>272</sup>. (Fast growing broiler breeds reach their slaughter weight currently in about 35 days, slow growing breeds in 50 days or more.) Controls increasingly demonstrate that a significant part of the products destined

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<sup>269</sup> <https://www.acm.nl/en/publications/publication/13761/Industry-wide-arrangements-for-the-so-called-Chicken-of-Tomorrow-restrict-competition>.

<sup>270</sup> <https://www.wiesenhof-privathof.de/>.

<sup>271</sup> LGC (2016): Study on state of play of processing technologies and the absorption of water in poultrymeat, pages 8-9, Publications Office of the EU, <https://doi.org/10.2762/620936>.

<sup>272</sup> The muscular water content declines with the age of an animal. Slow growing chicken breeds reach their slaughter weight at a higher age and lower water content than fast growing chicken breeds.

for sales to consumers do not meet the current water limit<sup>273</sup>. In 2020, about 35% of tested chicken breast poultrymeat of EU origin exceeded the limit. In fact, imported poultry has a lower compliance rate than EU poultry<sup>274</sup>. However, imported poultrymeat is nearly exclusively used for processed products and is not sold to consumers, whether fresh or frozen.

It is against this backdrop that the poultry industry advocates for increasing the limits on water content so to ‘modernise’ the standard and align it with its breeding targets.

As regards consumers, a higher total water content means they pay more for water and less for protein. Then again, the prices for such products may become cheaper compared to products from slower growing breeds, as their costs of production are lower.

Moreover, water content in poultry can be seen as a proxy for animal welfare related aspects: today’s fast-growing breeds are reported to give rise to serious animal welfare issues<sup>275</sup> (some national animal welfare labels have sprung up that promote slow-growing breeds as a result<sup>276</sup>). Adjusting the water-limit upward is therefore also difficult to reconcile with sustainability considerations. Not adjusting the water content limit would stimulate the poultry sector to stay with or switch to slower growing breeds, which will have for effect to increase the animal welfare benefits.

#### 7. *Downgrading of whole batches of poultrymeat during inspections*

The current marketing standards foresee that, when controls detect batches where individual pieces of poultry meat have visual defects, the whole batch is downgraded and often ends up as pet food. However, the meat in the batch is fit for human consumption and ways should be found to sort out just the pieces with visual defects.

The applicable rules on control related to the marketing standard for poultrymeat stipulate that poultrymeat is free of visual defects. When during quality controls by public authorities visual defects are discovered, i.e. when pieces are found non-compliant, the whole batch is downgraded. This means the meat will only be useable for processed products, sometimes even only ending up as pet food.

In the public consultation, poultrymeat processors suggested that the rule be modified in a way that allows removing individual non-compliant pieces but keeping the compliant pieces eligible for the intended marketing to consumers.

The commercial loss for operators would be limited if the identification of non-compliant cuts of poultrymeat destined for the retail market did not lead to the whole batch being downgraded to processing-grade meat. Public authorities would still have a solid legal basis to downgrade poultrymeat with visual defects. If the sanction for visual defects of

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<sup>273</sup> Commission Staff Working Document 2020, pp.11-12.

<sup>274</sup> 2021 Annual Report of the Board of Experts in Monitoring Water Content in Poultrymeat following Regulation (EC) No 543/2008, p. 7-10.

<sup>275</sup> Report from the Commission to the EP and the Council on the impact of genetic selection on the welfare of chickens kept for meat production, Section 3.2. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016DC0182>.

<sup>276</sup> <https://www.poultryworld.net/Health/Articles/2019/11/4-slow-growing-broiler-genotypes-get-approval-494133E/>.

pieces is to downgrade the whole batch – which can mean a significant financial loss – there might be pressure on control authorities to accept small visual defects so as to avoid downgrading a whole batch.

During controls, the competent authorities would have the possibility to apply sanctions in a more proportionate way and be subject to less pressure from operators to accept cuts with minor defects, but there would not be a direct effect on the administrative burden as controls have to take place either way. The adaptation of the rule would facilitate compliance and lead to cost savings for the operators. We consider this amendment as a technical one without political implications.

#### 8. *Update definitions of poultry products*

The current marketing standard for poultry define certain types of poultry (e.g. chicken, capon, poussin) and also cuts (e.g. breast, leg, drumstick, wing) that are commercially relevant; these terms are sales designations<sup>277</sup>. Since establishing the standard, new poultry products appeared on the market or gained commercial relevance that are not defined in the marketing standard. These technical terms need to be updated and expanded. Several suggestions for new products have been proposed already by poultry stakeholders (e.g. feet, paws, neck, head,). Most of these terms are defined internationally by the UNECE (United Nations Economic Commission for Europe).

Not adapting the useable sales designations for poultry products would continue a situation where certain terms are used but have a different meaning for operators and consumers. There is no direct economic impact but an indirect one. In case the sales designations were adjusted operators and traders would benefit from clearly described products in their business-to-business dealings, and consumers would be better off as they would be able to understand the characteristics of the product by way of more appropriate sales designations than is currently the case. Public authorities would likewise benefit from greater clarity for their control activities.

Harmonising and adjusting product definitions also contribute to improved consumer information. Defining new products that have an animal welfare or ethical dimension – like ‘Bruderhahn’ (fattening male chicks of laying breeds)<sup>278</sup> – would also have a positive impact on social sustainability. To the extent that better product definitions help producers valorise more poultry parts and help consumers better understand what they are buying, the revision may also contribute to the prevention of food waste if producers and consumers discard fewer poultry products as a consequence.

Updating and extending certain poultry definitions would improve business-to-business relations and simplify the exchange of goods, i.e. the adjustments will also result in the simplification of trade. Adjusting would not imply an administrative burden. For several of the products internationally agreed industry standards exist already that are, however, not legally binding<sup>279</sup>.

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<sup>277</sup> See Articles 1 and 4 of Regulation 543/2008.

<sup>278</sup> <https://doi.org/10.3390/agriculture8110176>; <https://www.landwirtschaft.de/landwirtschaft-verstehen/haetten-sies-gewusst/tierhaltung/was-ist-ein-bruderhahn>.

<sup>279</sup> <https://unece.org/trade/wp7/UNECE-Standards-meat>.

Mainly slaughterhouses and meat processors would be affected. To a limited extent also primary producers. They would get assurance that the terms they use have the same meaning in the whole EU. Consumers would benefit from a harmonised definition of poultry products that are offered on the market. They could be sure that the product they buy follows the same product definition even if supplied by different operators.

#### 9. *ORTs for production systems other than poultry*

There are currently no ORTs for livestock production systems other than for poultry (e.g. free range). In the public consultation a number of responses pointed at the introduction of additional ORTs (similar to the poultry example) that would define production methods, for example with positive environmental or animal welfare outcomes, in sectors such as beef meat, pig meat or dairy products. In this context, ‘pasture-based’, ‘grass-fed’, ‘outdoor’ or ‘free-range’ production systems are often mentioned.

Nevertheless, the preferred option is to not establish at this stage ORTs for animal sectors other than poultry.

Terms like ‘outdoor’, ‘free-range’, ‘pasture-based’, ‘grass-fed’ or ‘hay milk’ are already widely used and sometimes constitute established quality marks (e.g. under national or regional quality schemes).

As regards dairy products, ‘hay milk’ is for example covered by a registered ‘traditional speciality guaranteed’ (TSG)<sup>280</sup> at the EU level, which defines it as ‘produced according to traditional production conditions that comply with the ‘Heumilchregulativ’<sup>281</sup> (regulations on haymilk production). This form of milk is distinguished by rules forbidding the use of fermented fodder, such as silage, and rules forbidding the use of animals and feed which are to be identified as ‘genetically modified’ under prevailing legislation’<sup>282</sup>. This does not impede the existence of other schemes where the use of grass is also at the heart of the definition of the production method. The association ‘lait de paturages’ in France defines such milk as being obtained from cows that are grazing on average 150 days per year (minimum 120 days) for at least 6 hours a day<sup>283</sup>.

For beef there are several schemes that define rules related to the production method. Currently, the Commission is examining a request for a protected geographical indication (PGI) concerning Irish grass-fed beef,<sup>284</sup> where the production method is defined as basing at least 90% of the feed intake on grass, primarily grazed, with winter feeding of conserved grass, and with animals spending a minimum of 220 days per year grazing (such request, if successful, will not reserve the use of the term ‘grass-fed’ for beef meat). Many ‘Label Rouge’ schemes in France also include these criteria of access to quality feed and to the exterior, during the life of an animal (together with other criteria such as the breed). These schemes are perceived, according to a recent study, as bringing

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<sup>280</sup> <https://europa.eu/!BM98Bp>.

<sup>281</sup> <https://www.heumilch.com/heumilch/regulativ/>.

<sup>282</sup> Commission Implementing Regulation (EU) 2016/304.

<sup>283</sup> <https://www.lait-de-paturage.fr/la-marque/#referentiels>.

<sup>284</sup> <https://www.gov.ie/en/publication/61632-national-appeal-procedure-for-irish-grass-fed-beef/>.

about animal welfare improvements compared to baseline in the beef sector<sup>285</sup>. The same study considers that ‘Label Rouge’ schemes for pig meat in France are not necessarily delivering production methods higher than baseline in terms of sustainability.

Furthermore, several MSs already developed national systems to label farming methods, mainly based on animal welfare criteria (e.g. ‘Bedre Dyrevelfærd’ in Denmark<sup>286</sup>, ‘Beter Leven’ in the Netherlands<sup>287</sup>, ‘Haltungsform’ in Germany<sup>288</sup>). Going beyond the minimum legal requirements, these systems define criteria like outdoor access, additional space, straw bedding and enrichment material. A forthcoming study lists these schemes and assesses benefits and costs for operators and consumers. It mentions that pigs is the animal species that is most often covered by such animal welfare related labelling<sup>289</sup>.

The current national value adding labels are well established. They bring to producers a value adding complement, in form of either a price premium or at least more stable demand and better access to markets for their products. There is no evidence that the introduction of additional ORTs in an area where many initiatives exist already would bring added value for farmers, especially given geographically different production conditions that pose challenges to find ‘one-size-fits-all’ terms, definitions and standards that would do justice to farmers and the very heterogeneous production systems across the EU (only commercial egg and poultry production is largely standardised across the EU, if not globally).

Without a clear benefit, introducing ORTs at the level of the EU entails costs for producers and (through the need for enforcement) for authorities. For consumers, they could mean a bigger choice of more differentiated products.

Farmers are nearly exclusively SMEs, processors of regional quality products (e.g. ‘hay milk’, ‘Weiderind’) also mostly qualify as SMEs. Such SMEs would benefit of higher visibility and common understanding and definition relative to their production methods, which could benefit from higher demand through mainstreaming. However, those engaged in existing initiatives would be affected by an EU wide definition of their terms, either having to align to new definitions, or having to face stronger competition. Given the challenges of creating standards that fit the different production systems across the EU, introducing general ORTs at EU-level could also mean some farmers are disadvantaged.

Leaving it to MSs to manage schemes for the labelling of production systems other than poultry will not reduce the possibility for such schemes to offer better animal welfare or inform consumers, whereas the tailoring of such schemes to national and regional production systems can help livestock production in the respective rural areas.

The discussion on ORTs for poultry has shown that farming methods for other products than poultry are very diverse and less standardised. This would be even more complex

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<sup>285</sup> <https://www.quechoisir.org/action-ufc-que-choisir-labels-alimentaires-et-signes-de-qualite-promesses-non-tenues-une-revision-s-impose-n94920/>.

<sup>286</sup> <https://bedre-dyrevelfaerd.dk/servicemenu/english/>.

<sup>287</sup> <https://beterleven.dierenbescherming.nl/>.

<sup>288</sup> <https://www.haltungsform.de/>.

<sup>289</sup> EC (forthcoming), Study on animal welfare labelling.

with species that live longer than poultry (cattle, pigs, sheep) and are kept in different holdings and under different production systems during their life. Production systems depend very much also on climatic conditions and can differ considerably within the EU (e.g. pasture periods, fodder crops). Experience in the past with the definition of veal marketing standards (Commission Regulation (EC) No 566/2008<sup>290</sup>) has shown serious difficulties to agree on an EU-wide definition of the relatively easy term 'veal'. The result is a long list of derogations and specific terms for individual MSs. The aspect of language diversity should not be underestimated either.

Provided the difficulties mentioned above are overcome, a common definition of certain terms would however simplify the understanding by operators and controllers of the rules that need to be followed and controlled.

Whereas poultry has a relatively short fattening period of several weeks, this period is much longer for other animals (cattle, sheep, pigs). It takes several months and it is quite common that these animals are moved between different farms (with different farming methods) during their life. Defining and controlling ORTs (e.g. on farming methods) would require specific traceability systems along the food chain that allows that information on production methods is passed on (together with the good) from the farm up to the retail shelf. This implies additional costs, that are often covered through certification schemes, be they geographical indications or TSG or through collective or certification trademarks (which is not the case for ORTs: costs would be for the administrative control bodies).

Most affected would be producers who have already invested to comply with established product specifications. Organisations (producer organisations, processors, retailers) that established and control the use of certain terms would also be affected if their schemes would be replaced by ORTs at the EU-level.

The results of the public consultation on marketing standards revealed that views on this subject are divided. Although, in the public consultation, ORTs are seen as useful and bringing more benefits than costs, there seem to be difficulties in agreeing on 'candidate' terms that would be able to span the different production conditions across EU MSs. For example, the term 'grass-fed beef' is mentioned as a controversial case, as can mean a variety of production systems across the EU (for example, as seen above, beef grown in areas where pastures area accessible nearly the whole year round like in the Atlantic coasts, as compared to animals bred in mountain areas that have to spend some time indoor when pastures are covered by snow). The corollary that certain terms would therefore only be used in some parts of the EU or that the use of the same term presupposes different conditions in different parts of the EU would fit ill with the very idea underpinning ORTs.

Given that no marketing standard for ORTs other than poultry exist, the only option would be to establish a completely new standard for that purpose. There is no evidence that a harmonisation of existing private, regional and national schemes and definitions would bring significant economic, social and environmental benefits compared to the existing non-harmonised schemes, while the complexity of the operation (defining

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<sup>290</sup> <http://data.europa.eu/eli/reg/2008/566/oj>.



common EU wide definitions for production methods that vary widely in the EU) seems evident. In addition, the animal welfare baseline conditions will be subject to revision in the coming months, rendering even more delicate the definition at EU level of ORTs in the animal sectors that would have an animal welfare vocation.

## C. ARABLE CROPS AND OLIVE OIL

### 1. *Allowing the sales of bulk olive oil*

There is a development of retail practices in low packaging supermarkets towards refillable recipients for olive oil, commonly known as 'bulk sales'. This saves packaging as consumers come with their own reusable recipients. The practice is in line with current initiatives at EU level, such as the F2F and are targeted at reducing waste, both as regards packaging and food. However, olive oil can be distinguished from other products sold in bulk through its high value. Also, its packaging is part of the guarantees for quality and authenticity, as direct sunlight and heat accelerate its natural degradation.

The current marketing standard requires that olive oil is presented to the final consumer in a packaging of a maximum capacity of five litres with an opening system that can no longer be sealed after the first time it is opened.<sup>291</sup> In addition, it is mandatory that the quality<sup>292</sup> of the olive oil is preserved up to the best before date<sup>293</sup>. Indeed an oil has to preserve all its quality characteristics<sup>294</sup>, including its organoleptic characteristics (median of fruitiness and median of defects) up to the best before date. To achieve this for bulk olive oil, producers will have to take into account that the natural degradation of olive oil, may be accelerated when olive oil is sold in bulk. Currently, the only validated method to assess the organoleptic characteristics is the organoleptic method of the International Olive Council, included both the Regulation 2568/91 and the Codex Standard for Olive Oils and Olive Pomace Oils<sup>295</sup>. While the method has its contestants, no validated alternatives are currently available, neither in the EU nor worldwide. Olive oil must also be labelled with a number of mandatory particulars. The reasons are related to the higher value of olive oil in relation to other vegetable oils, the need for authenticity of olive oil and the concern about fraudulent practises. Therefore, the current legislation

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<sup>291</sup> Article 2 of Commission Implementing Regulation (EU) No 29/2012 of 13 January 2012 on marketing standards for olive oil, [http://data.europa.eu/eli/reg\\_impl/2012/29/oj](http://data.europa.eu/eli/reg_impl/2012/29/oj).

<sup>292</sup> The European Union being a member of the International Olive Council, it is bound to apply the International Agreement on Olive Oil and Table Olives. This Agreement defines *inter alia* the different categories of olive oils and olive-pomace oils. The European Union cannot on its own initiative set additional quality requirements on olive oil without promoting such changes at international level and having the IOC trade standard amended. Any change to the marketing standards for olive oil at EU level should be compliant with the IOC agreement.

<sup>293</sup> See Article 2(4) of Regulation 2568/91.

<sup>294</sup> Currently, approximatively 30 physico-chemical and organoleptic parameters are used to determine the quality and the purity of the different categories of olive oil. Each parameter is checked by using appropriate analytical methods and shall respect strict limits defined by the legislation. The parameters, as well as their limits and the related methods of analysis are based and updated taking into consideration the latest scientific developments. The organoleptic assessment is the method used at international level to determine whether organoleptic properties of virgin olive oils comply with the limits established for organoleptic parameters. The EU has recently funded a research project to further develop in particular the organoleptic assessment method, and the results obtained in that context contribute to experts discussion at international level. As such, they cannot be transposed to policy yet.

does not allow the bulk sale of olive oil. In some cases, low packaging ('zero waste') supermarkets add condiments to olive oil, so that they can circumvent this interdiction.

There is a balance to achieve between more sustainable retail practices and the need to guarantee the authenticity of olive oil. Citizens and consumer organisations would like to be able to buy olive oil in bulk, provided equivalent authenticity guarantees and hygiene, labelling and traceability rules are respected. On the other side, producers are against the bulk sale of olive oil, considering that 'it would diminish the value of extra virgin olive oil and may compromise its quality label'<sup>296</sup>. From the MSs, most producing MSs (totalling more than 90% of the EU olive oil production) oppose bulk sales.

Due to the opposition from the main producing MSs and a majority of businesses or business associations, permitting bulk sales of olive oil is presented as an option, allowing MSs to adopt national rules for bulk sale of olive oil under conditions that guarantee the safety and quality of the product (for the MSs to decide and implement). This would provide as well for legal certainty.

As an example, France – interpreting the existing rules – has put in place a system whereby the filling of recipients can take place at the retail stage provided the retailer is certified/registered as a final conditioner by the national authorities. This system allows the filling operation to take place under the eyes of the consumer, in a container of less than five litres provided with a tamper-proof closure system and in compliance with the labelling requirements. This interpretation of the rules was not challenged so far.

In general terms, the main economic impact for operators relates to the bottling margin, which might differ significantly depending on several elements: quality oriented vs. price oriented, marketing costs, economies of scale, etc. The results of the consultation showed a perceived loss of value by operators of olive oil, a high-quality product. This seems the main argument of farmers and producer associations for being against the option possibility to allow bulk sales of olive oil.

Mandatory conformity checks for olive oil already exist and they are based on risks analysis<sup>297</sup>. MSs would consider allowing bulk sales, depending on the increase in the cost of checks. This would in turn be dependent on the rules they would establish nationally to allow the bulk sales on their territory. However, the relatively high costs of enforcing the current olive oil marketing standards derive rather from the laboratory and organoleptic tests (SWD 2020).

For consumers, the economic impact is less clear, as the bottling margin could simply be transferred to the retail level, but bulk sales could also be less expensive, especially if a system of returnable bottles is implemented. No specific impacts on trade are expected, due to the limited number of countries exporting to the EU.

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<sup>296</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12772-Agricultural-products-revision-of-EU-marketing-standards/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12772-Agricultural-products-revision-of-EU-marketing-standards/public-consultation_en).

<sup>297</sup> Commission Regulation (EEC) No 2568/91 of 11 July 1991 on the characteristics of olive oil and olive-residue oil and on the relevant methods of analysis; OJ L 248, 5.9.1991, p. 1–83; Article 2a.

## 2. *Sales descriptions of plant-based preparations*

The current EU marketing standard in the CMO Regulation concerning milk and dairy products reserves certain terms (e.g. milk, butter, cheese, cream) exclusively for products that are derived from milk from animals.<sup>298</sup> The term ‘soy milk’ can thus not be used. In the framework of the CAP reform, the European Parliament proposed an amendment to extend the protection of dairy designations to the mere evocation of dairy terms, but this amendment was abandoned by the co-legislators during the trilogue discussions.

The CMO Regulation does not restrict in the same manner the use of terms that initially derive from meat products. Provided that consumers are not misled (see FIC), plant-based products can carry sales names such as ‘steak’, ‘sausage’, ‘escalope’, ‘burger’ or ‘hamburger’. During the CAP reform, the European Parliament discussed an amendment to introduce restrictions to the use of such terms, but the amendment was not endorsed.

The issue of sales descriptions of plant-based preparations was the subject of a strong interest from stakeholders and MSs during the public consultation. Therefore, it is necessary to mention it in this impact assessment.

In October 2021, France notified to the Commission under TRIS (Technical Regulation Information System)<sup>299</sup> a draft decree that would prohibit the use of ‘meat terms’ for plant-based preparations produced and marketed in France. Some stakeholders involved in the production of meat alternatives contacted the Commission to oppose this initiative. Several MSs called for a reflection at the EU level. The Commission expressed concerns regarding the consistency of the French decree with the sustainability objectives of F2F, in particular the promotion of sustainable food consumption and the shift to healthy, sustainable diets. It also considers that the existing EU law (FIC) already provides an appropriate level of protection to the consumer against misleading, inaccurate or unclear information. However, in the absence of any rule whereby the use of ‘meat terms’ would be explicitly allowed for plant-based preparations and in the absence of EU marketing standards for sales descriptions for plant-based preparations, the French initiative seems not to be incompatible with existing EU marketing standards.

At this stage, the Commission takes note that the views of stakeholders on the use of such terms for sales descriptions of plant-based preparations are very divided. In the framework of the CAP reform, Members of Parliament had extensive discussions on the topic at the end of which the status quo was kept. Not least with a view to this outcome at the level of the legislator, a change of the regime governing sales descriptions for plant-based preparations is not part of the present revision of EU marketing standards.

## 3. *Indication of the country of origin for pulses*

With their nutritional value, being rich in proteins, pulses can bring climate and environmental benefits and contribute significantly to healthy and sustainable diets, and

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<sup>298</sup> See CMO regulation, Annex VII, Part III. Narrow exceptions are possible for these terms as laid down in Annex I of Commission Decision 2010/791 of 20 December 2010, <http://data.europa.eu/eli/dec/2010/791/oj>.

<sup>299</sup> Notification 2021/638/FR in <https://ec.europa.eu/growth/tools-databases/tris/en/>.

they can play an important role in the shift to a more plant-based diet<sup>300</sup>. A substantial part of pulses consumed as food in the EU is imported, especially lentils and chickpeas, which are used exclusively for food and represent 28% of pulses consumed as food. Imports of other pulses, like peas and broad beans, are more used for feed purposes<sup>301</sup>. 63% of the lentils consumed in the EU are imported, 41% for chickpeas. In 2021, three countries account for more than 90% of all imports of lentils (Canada for 50%, Türkiye for 20% and USA for 20%) and four countries account for more than 80% of all imports of chickpeas (Mexico for 27%, Türkiye for 23%, USA for 21% and Canada for 11%)<sup>302</sup>. Italy and Spain are the main importing Member States of lentils and chickpeas..

Consumers are interested to know about the origin of the products they buy, in particular the place of production<sup>303</sup>.

While pulses harvested green for food purpose may only be marketed if the country of origin is indicated (such as green beans and peas, because they are classified as F&V), the labelling of the origin of dry pulses is voluntary at the initiative of food business operators, provided they fulfil the applicable provisions of FIC. Voluntary origin labelling is rarely used and, where it occurs, tends to be in the high value segment of the market. Pulses that do not belong to high value segments (including when they are protected by a geographical indication, PDO or PGI<sup>304</sup>) are usually not origin labelled. For convenience reasons, significant volumes of pulses are commercialised as pre-cooked products e.g. in cans or in glass jars (since cooking of dry pulses takes a long time).

The labelling could be global (like 'EU/non-EU'), or more specific (like the country of origin). The level of information of a label EU/non-EU is often considered as too generic by the final consumers and is likely to have little impact<sup>305</sup>. The labelling of the country of origin is expected to lead to higher consumer satisfaction and would be more coherent with existing F&V rules applicable to pulses harvested green for food purpose. Several MSs are supporting the mandatory labelling of the country origin of dry pulses following the F&V model<sup>306</sup>.

An extension of origin labelling obligation to cooked dry leguminous vegetables will increase the scope and reinforce the impacts of the proposed modification of the marketing standards. The mandatory origin labelling would therefore concern dry leguminous vegetables, shelled, whether or not skinned or split (CN Code 0713) intended

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<sup>300</sup> [https://ec.europa.eu/info/food-farming-fisheries/plants-and-plant-products/plant-products/cereals/development-pla%20nt-proteins\\_en](https://ec.europa.eu/info/food-farming-fisheries/plants-and-plant-products/plant-products/cereals/development-pla%20nt-proteins_en)

<sup>301</sup> DG AGRI source – Protein crops balance sheet.

<sup>302</sup> COMEXT data 2021.

<sup>303</sup> Study on the mandatory indication of country of origin or place of provenance of unprocessed foods, single ingredient products and ingredients that represent more than 50% of a food - Final report – September 2014 – Food Chain Evaluation Consortium (FCEC), page 64.

<sup>304</sup> <https://europa.eu/!BM98Bp>.

<sup>305</sup> Study on the mandatory indication of country of origin or place of provenance of unprocessed foods, single ingredient products and ingredients that represent more than 50% of a food - Final report – Food Chain Evaluation Consortium (FCEC), page 64.

<sup>306</sup> For the F&V model, see in particular, Article 76(1) of CMO Regulation and Articles 6 and 7 of Commission Implementing Regulation (EU) No 543/2011.

for human consumption and dry leguminous vegetables cooked without any ingredients, except salt and additives (CN Code 2005).

If consumers demand more pulses, this has likely positive repercussions for EU producers and importers. Such an increase of the demand is not expected to have a significant impact on consumer prices, though, since it is expected that the additional demand will be compensated by an increase of EU production thanks, among others, to national protein strategies that favour the development of protein crops including pulses.

The compulsory labelling of the origin would imply new controls by public authorities that would generate additional costs. Taking into account that pulses are not high value products and that the risk of fraud on the origin will remain low, it is not intended to require additional traceability requirements. The default traceability requirement, i.e. one step forward one step back traceability, will remain applicable.

Compulsory origin labelling may imply limited additional costs for operators due to the necessary adaptations of sourcing, packaging and marketing practices, in particular when operators handle pulses from several origins. Those costs would be mitigated by the fact that mixes of origin will remain allowed with an appropriate labelling of origin.

Since the compulsory labelling of the country of origin would apply to non-processed food or to processed food without any additional ingredients, the labelling will be less costly than for products that go through a high number of production stages and places<sup>307</sup>.

Mandatory origin labelling of dried pulses will facilitate promotion actions in the EU focussing on the qualities of pulses. Those actions will support the shift of consumption patterns from animal products to more plant-based diets and will provide information to the consumer that the production of pulses creates environmental benefits. The implementation of EU promotion programmes on pulses would also make stronger the pulses value chain by bringing together the actors of this sector.

The compulsory labelling of the origin of pulses is coherent with:

- the CMO in the sense that it aligns provisions with those applicable to similar products like F&V. The compulsory labelling of the origin of pulses being an extension of an obligation already applicable to F&V, it will remain in the scope of the CMO marketing standards and will not overlap with the current FIC Regulation and its undergoing revision that will not cover the origin of pulses;
- the new CAP that provides plenty of opportunities for MSs to develop the production of EU plant protein sources, including pulses, through several supportive instruments;
- the objectives of the Green Deal, F2F and other initiatives of the Commission related to the sustainability of the food chain.

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<sup>307</sup> Page 8 of the report from the Commission to the European Parliament and the Council regarding the mandatory indication of the country of origin or place of provenance for unprocessed foods, single ingredient products and ingredients that represent more than 50% of a food (COM(2015) 204 final).