



Simplified nutrition labelling

Implementation of the Law on
Modernising our Health System
(article 14-II)

*Report of the steering committee for assessment
under actual buying conditions*

21 April 2017

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The aim of this report is to present the results of the assessment under actual buying conditions of simplified nutrition labelling systems, which had been decided by the Minister of Social Affairs and Health. It re-states the context in which the operation was launched, the system implemented, the conclusions drawn by the scientific committee, and the follow-up that can be given to it, taking account of regulatory questions and the positions of stakeholders, so as to give public authorities all the information needed for their decision-making.

1. The context

1.1. Legislative and EU context

The law on modernising our public health system was published in January 2016. In its article 14, it provides that the compulsory nutrition declaration featuring on food product packaging “can be accompanied by a presentation or an additional expression by means of graphics or symbols, under the conditions set out in article 35” of Regulation (EU) 1169 / 2011, the so-called INCO Regulation.

Pursuant to that article 14, “The terms and conditions by which the **recommendations** of the administrative authority set out in 2 of the same article 35 are established and are subjected to assessment are defined, following the opinion given by the Agence Nationale de Sécurité Sanitaire de l’Alimentation, de l’Environnement et du Travail (ANSES – French Agency for Food, Environmental, and Occupational Health and Safety), under a decree issued by the Council of State.” On the basis of that wording, the public authorities can simply recommend such a graphic representation to food producers. That limitation is due to the fact that the INCO Regulation referred to by the law does not allow that labelling to be made compulsory. INCO Regulation article 35 states that “[...] Member States may recommend to food business operators the use of one or more additional forms of expression or presentation of the nutrition declaration that they consider as best fulfilling the requirements laid down in points (a) to (g) of paragraph 1. [...]”

The implementing decree of article 14-II of the LMSS (*Loi de Modernisation de notre Système de Santé* – Law on Modernising our Health System) came into force on 19 July 2016 as part of the consultation process initiated by the Minister of Social Affairs and Health, as described below.

1.2. Context of the recommendation for a nutrition logo

The principle of a nutrition logo appeared in the *Programme National Nutrition Santé* (PNNS – French National Programme on Nutrition and Health) for 2011-2015 (action 3.1).

Improving nutrition information is also a recommendation made by the World Health Organisation in its Vienna Declaration of 5 July 2013.

In November 2013, Professor Serge Hercberg presented to the Minister for Health a report entitled “*Propositions pour un nouvel élan de la politique nutritionnelle française de santé publique*” (“Proposals for giving fresh momentum to French public-health nutrition policy”), which recommended, on the basis of studies published, the implementation of a simplified nutrition logo on the front of food packaging. It stipulated that the logo needed to be a 5-rank score expressed as 5 colours from green to red and called 5-C; it later became Nutri-Score.

Consumer associations had long wanted simplified, synoptic nutrition labelling that was colour-based and front facing and, as such, they supported the proposal for the 5-C logo.

However, that proposal attracted criticism from a large number of industrialists and distributors who did not wish to commit to the implementation of a nutrition logo that would be the 5-C version on a compulsory basis. In July 2013, the *Association Nationale des Industries Agroalimentaires* (ANIA – National Association of Agri-Food Industries) wrote to the European Commission, and on 20 February 2014, ANIA complained to the European Commission about the “Traffic Lights” system put in place in Great Britain. The same was true of the Italian agri-food federation, as well as of various national and European federations of producers.

Moreover, other logos were put forward in succession, once by Carrefour in September 2014, then “SENS”, proposed by the *Fédération du Commerce et de la Distribution* (FCD – Trade and Distribution Federation) and industrialists. Next, some industrialists recommended the revival of the British “Traffic Lights” system, whilst others recommended a logo based on the Recommended Daily Allowance (RDA, which became Nutri-Repère).

1.3. Consultation launched by the Minister of Social Affairs and Health

In March 2015, the Minister of Social Affairs and Health launched a consultation with stakeholders (consumers, patients, industrialists, distributors, scientists and administrative bodies dealing with health, food, and consumer affairs) in order to put in place the conditions for the future recommendations of the public authorities to be implemented effectively by producers and distributors.

That consultation allowed a positive spirit to prevail, as well as the will to achieve results and the common desire for a single system to be put in place in France. Wide-ranging agreement was reached to opt for the proposal made in June 2015 by the *Fonds Français pour l’Alimentation et la Santé* (FFAS – French Fund for Food and Health) to set up a preliminary assessment, under actual buying conditions in shops, of the various possible systems, in order to determine the most effective one relative to consumers’ buying habits, and for their dietary habits to be the most favourable possible towards health. That idea followed on from preliminary work done by the FFAS.

The Minister of Social Affairs and Health endorsed that proposal in order to:

- make up for the lack of evidence for the effect of logos in real life
- rank their respective effects
- involve producers and distributors, the measure being a voluntary one
- enable them to come together.

Nowhere on earth had simplified labelling systems, whether in use or planned, been assessed under actual buying conditions.

The decree of 19 July 2016 signed by the Prime Minister and the four ministers concerned gave a regulatory basis to that assessment (*cf.* 1.5. below).

The scope of the project, its relevance, and its usefulness are the reasons for the financial support given by the public authorities. An order dated 9 November 2016 and made by the Ministers for the Economy and the Budget authorised the payment of public grants to the *Fonds Français pour l’Alimentation et la Santé*, pursuant to number III, article 140 of law no. 2008-776 of 4 August 2008 on the modernisation of the economy.

Those grants amount to €1 095 827, spread between the Ministry of Social Affairs and Health (€332 827) and the *Caisse Nationale d'Assurance Maladie des Travailleurs Salariés* (CNAMTS – French National Health-Insurance Fund for Salaried Workers) (€763 000) (the FFAS itself having received €1 169 750 contributed by over 70 businesses working in production and distribution), i.e. a total budget of 2.2 million euros.

A tripartite DGS / CNAMTS / FFAS agreement of 16 November 2016 set the terms of the financial contribution made by the *Direction Générale de la Santé* (Directorate General for Health) of the Ministry of Social Affairs and Health and the CNAMTS to subsidise the initiative led by the FFAS.

1.4. Implementation by the FFAS of the experiment under actual buying conditions

Under the terms of a letter dated 2 February 2016, the Minister awarded the joint chairpersonship of a steering committee to Professor Benoît Vallet, Director General for Health, and to Christian Babusiaux, Honorary Chairperson of Chamber at the *Cour des Comptes* (Court of Auditors) and chairperson of the FFAS.

A multidisciplinary scientific committee was set up under the chairpersonship of Noël Renaudin, chairperson of the committee on charters of voluntary commitment to nutrition progress for food professionals, set up as part of the *Programme National Nutrition Santé* (PNNS).

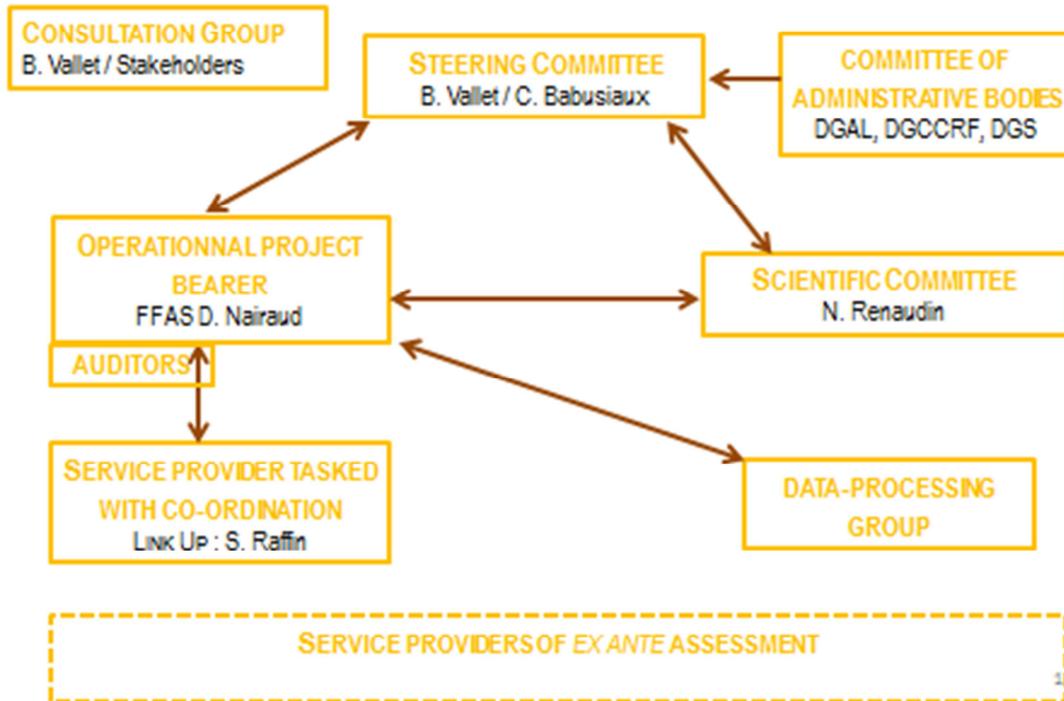
A governance protocol setting out the functions and coordination of the two committees has been drawn up and published:

- the **steering committee** was tasked with laying the ground work for the assessment, its implementation, and the presentation of its conclusions, so that the public authorities could decide on the system that they would recommend.
- the **interdisciplinary scientific committee** was made up of experts in epidemiology and assessment, the food-consumption economy, nutrition, social marketing, sociology, social psychology, and the food sciences, maintaining the balance between those various disciplines.

The scientific committee worked independently of the steering committee.



Governance



Those two bodies started functioning from the second fortnight in February 2016, and from 11 April 2016, the scientific committee adopted the scientific protocol to be complied with by the assessment.

1.5. Publication of decree no. 2016-980 of 19/07/2016

At the end of the first phase of the work by the steering committee and the scientific committee, decree no. 2016-980 on additional nutritional information concerning foodstuffs was signed jointly on 19 July 2016 by the Prime Minister, the Minister for Agriculture and Food, the Minister of Social Affairs and Health, the Minister for the Economy, and the Secretary of State for Consumer Affairs; the decree was published on 21 July. It sets out the following:

- the form of the logo recommended by the public authorities complies with a design brief attached to an order issued by the Ministers of Health / Agriculture / Consumer Affairs, after an opinion was received from the *Agence Nationale de Sécurité Sanitaire, de l'Alimentation, de l'Environnement, et du Travail* (ANSES). It must comply with the provisions of article 35 of the INCO Regulation;
- the conclusions of the *ex ante* assessment carried out under actual buying conditions contribute to drawing up the design brief;
- volunteer manufacturers and distributors who choose to implement the recommended logo use it on all the foodstuffs that they bring to market under their brand;
- the system is to be assessed within 3 years.

2. A scientific system of unprecedented scale

2.1. The general principles of the system

The steering committee adopted a *principle of transparency* for the whole of the system and the course of the operation. A dedicated page was set up on the web site of the Ministry of Social Affairs and Health. It contains the governance protocol, the composition of each body, and the *Déclarations Publiques d'Intérêt* (DPI – Public Disclosures of Interest) of all the scientists who are members of the scientific committee.

<http://social-sante.gouv.fr/prevention-en-sante/preserver-sa-sante/article/l-evaluation-en-conditions-reelles-d-achat-des-systemes-d-information-317290>

The same information was also provided on the web site of the *Fonds Français pour l'Alimentation et la Santé*. A set of 30 questions and 30 answers was also published on that web site, and updated during the entire period of the operation.

<http://alimentation-sante.org/2016/11/logos-nutritionnels-point-infos-consommateurs/>

The launch of the experiment under actual buying conditions led to a press conference held on 16 September 2016. This was followed by regular communication from the Ministry and the FFAS, in particular via their web sites.

A second principle was openness towards all the parties and bodies concerned, in order to subsequently foster the widest possible application of the logo, a condition of its effectiveness for public health.

In addition to the two co-chairpersons, the steering committee had eight members: the three directorates general concerned (Directorate General for Food, Directorate General for Competition, Consumer Affairs, and Fraud Control, and the Directorate General for Health), the CNAMTS, two consumer organisations (the UFC (*Union Fédérale des Consommateurs* – Federal Union of Consumers) and the CLCV (*Consommation, Logement, Cadre de Vie* – Consumer Affairs, Housing, Living Conditions)), an industrialists' representative, a representative of the distribution sector, and the two research institutions (INRA (*Institut National de la Recherche Agronomique* – French National Institute for Agricultural Research) and INSERM (*Institut National de la Santé et de la Recherche Médicale* - French National Institute for Health and Medical Research)) whose researchers took part in developing some of the logos assessed. At his sole attendance at the Steering Committee meeting held in June 2016, the chairperson of INSERM announced his decision to withdraw from it. All the decisions taken were passed unanimously by all the other members of the committee. The European Commission (DG HEALTH) took part as an observer.

Along the same lines, the scientific committee was based on interdisciplinarity. It worked in two successive phases, with some of its members being renewed in view of the second phase. The concern for openness also meant that the committee included two foreign researchers.

A third principle was the use of recognised teams. For co-ordinating service providers that provided the material implementation of the operations, the FFAS chose Link Up, which had already carried out field experiments and of which the chairperson is the only one in that type of body to be authorised to carry out research. Qualitative studies were carried out by CREDOC (*Centre de Recherche pour l'Étude et l'Observation des Conditions de Vie* – French Research Centre for Studying and Observing Living Conditions), a body that specialises in consumer studies.

To process the data, the FFAS, in agreement with the scientific committee, chose the scientific director of the *École d'Économie de Toulouse* (Toulouse School of Economics) (Pierre Dubois), supported by a director of research (Céline Bonnet), the director of INRA's ALISS (*Alimentation et Sciences Sociales* - Food and Social Sciences) Laboratory (Olivier Allais), and an associate professor at INSEAD (Paulo Albuquerque).

A fourth principle was that of independence. The scientific committee worked independently of the steering committee. The chairperson of the latter committee checked for absence of conflicts of interest.

The steering committee did not make any modification to the experiment protocol drawn up by the scientific committee. To check that the assessment was being carried out properly in shops, the FFAS recruited 7 high-level auditors, chosen for their skill as well as their independence, and working independently of Link Up and the service providers tasked with implementation. Unannounced checks in shops were carried out by the regional departments of the DGCCRF (*Direction Générale de la Consommation, de la Concurrence, et de la Répression des Fraudes* - Directorate General for Consumer Affairs, Competition, and Fraud Control).

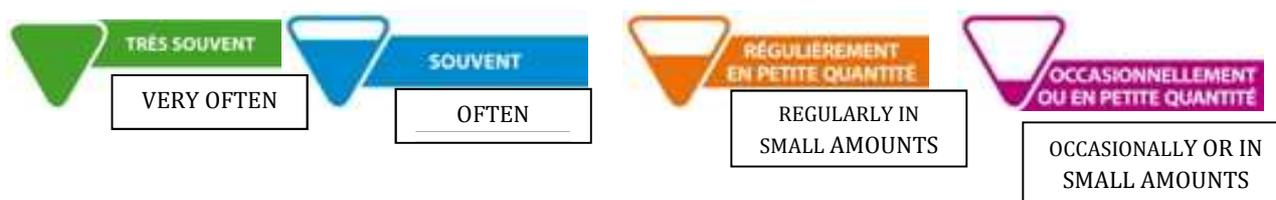
2.2. The four simplified nutrition information systems tested

Four systems were tested because of the interest shown in them by the public authorities, scientists, and stakeholders in the sectors. Their variety enabled a set of possible characteristics to be tested:

Nutri-Score: a synoptic 5-colour system put forward by public-health researchers (a graphic improvement of the “5-C” system put forward in November 2013 by Serge Hercberg). It places products into five categories set up on the basis of a score that describes the nutritional quality of the product based on its content in major nutrients and certain other items; the five colours appear systematically on the packaging, with a “magnifying glass” on the one that relates to the product.



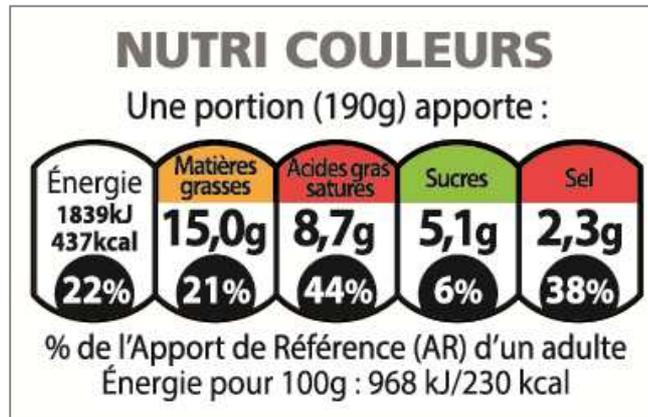
SENS: a synoptic 4-colour system that also includes an indication of the frequency of consumption proposed by the FCD, industrialists, and nutritional researchers, including Nicole Darmon based on her work on SAIN/LIM (healthy foods / foods to be limited). It is put together using a classification based on the product’s content in major nutrients and certain other items; each product generates one of the four following visuals:



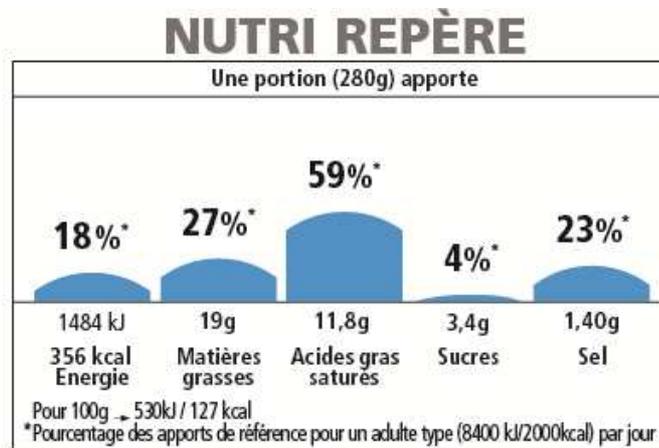
The algorithms used to calculate the two synoptic scores (Nutri-Score and SENS) were validated by ANSES¹.

¹ Scientific and technical support from ANSES for the feasibility study on calculating a nutrition score as drawn up by Rayner *et al.* (April 2015), and Scientific and technical support from ANSES for the feasibility of classifying foodstuffs in accordance with the algorithm proposed by the FCD: a comparison of results obtained with the results of the 5-C system that incorporates the adjustments made by the *Haut Conseil de la Santé Publique* (French High Council for Public Health) (March 2016).

Nutri-Couleurs: an analytic system adapted from the one implemented in the United Kingdom a number of years ago (“Traffic Lights”), and taken up by several operators in Ireland (as well as by Marks & Spencer in France and Eroski in Spain). It is based on a three-colour scale that shows the percentage contribution and the absolute value of a portion of foodstuff to reference dietary intakes in energy, sugars, salt, fats, and saturated fatty acids.



Nutri-Repère: an analytic system that was proposed in the spring of 2016 and that improves upon the “GDAs” (Guideline Daily Amounts) system that is already in use. The system displays the contribution as a percentage and as an absolute value of a portion of food to reference daily amounts in energy, fats, saturated fatty acids, sugars, and salt (i.e. items that appear in the compulsory nutrition declaration featuring on the reverse of products).



Those 4 systems have different designs, and they do not have exactly the same content: Nutri-Repère and Nutri-Couleurs include just the energy and the main nutrients to be limited. Nutri-Score adds proteins, fibres, and, in relation to vitamins, the percentage of fruits and vegetables; SENS replaces sugars with free sugars, and, for some foodstuff categories, it adds, other than fibres, calcium, alpha-linolenic acid (a fatty acid), and vitamin C. However, the objective of the experiment under actual buying conditions was to rank the logos based on their impact on consumers’ purchases, and of their effects on the “FSA score²”, which measures the overall nutritional quality, not on their detailed effects on the consumption of various nutrients.

² Score from the Food Standard Agency by Rayner *et al.*

Moreover, another system, Nutrimark (based on the Australian Health Star Rating (HSR) system) and combining a synoptic system in black and white and an analytic system, was tested by the Leclerc group on its drive-thrus. The brand indicated that it could not join the experiment in shops, since its own shops were managed by self-employed people and were not homogenous enough to take part in a comparative test. In June 2016, it announced that it would carry out a test that covered only purchases of generic-brand products present in its drive-thrus.

The test was carried out over two three-week periods. The data collected from that particular context could not be used in the system of assessment under actual buying conditions.

Doubts were initially expressed over the experiment's ability to produce a result under actual buying conditions in shops. The experiment carried out on the basis of the protocol drawn up by the scientific committee dispelled those fears, and it enabled a significant set of results to be obtained.

2.3. The protocol

The scientific committee presented the protocol on 11 April 2016.

The objective of the protocol was to enable identification of the most effective nutrition-information system, first by gathering a mass of quantitative data on purchases in shops.

It also included a section on qualitative studies. The quantitative element provided for:

- a test carried out for at least ten weeks in 60 shops (10 for each system, plus 20 control shops);
- a range of 6 product ranges to be labelled, defined by the scientific committee and of which 4 were chosen by the steering committee based on their feasibility, in agreement with the scientific committee: fresh delicatessen products, mass-produced baked goods, mass-produced breads and pastries, and ready meals in tins;
- geographical criteria for choosing the shops, on the basis of which, and in agreement with the scientific committee, 4 regions were chosen: Ile-de-France, Hauts-de-France, Haute-Normandie, and Auvergne-Rhône-Alpes, with the spread of shops determined by a draw and with 50% of the shops being in disadvantaged areas.

For its part, the qualitative analysis aimed at providing a grasp of the perception and understanding of nutrition-information systems by consumers in test shops, and of their information needs.

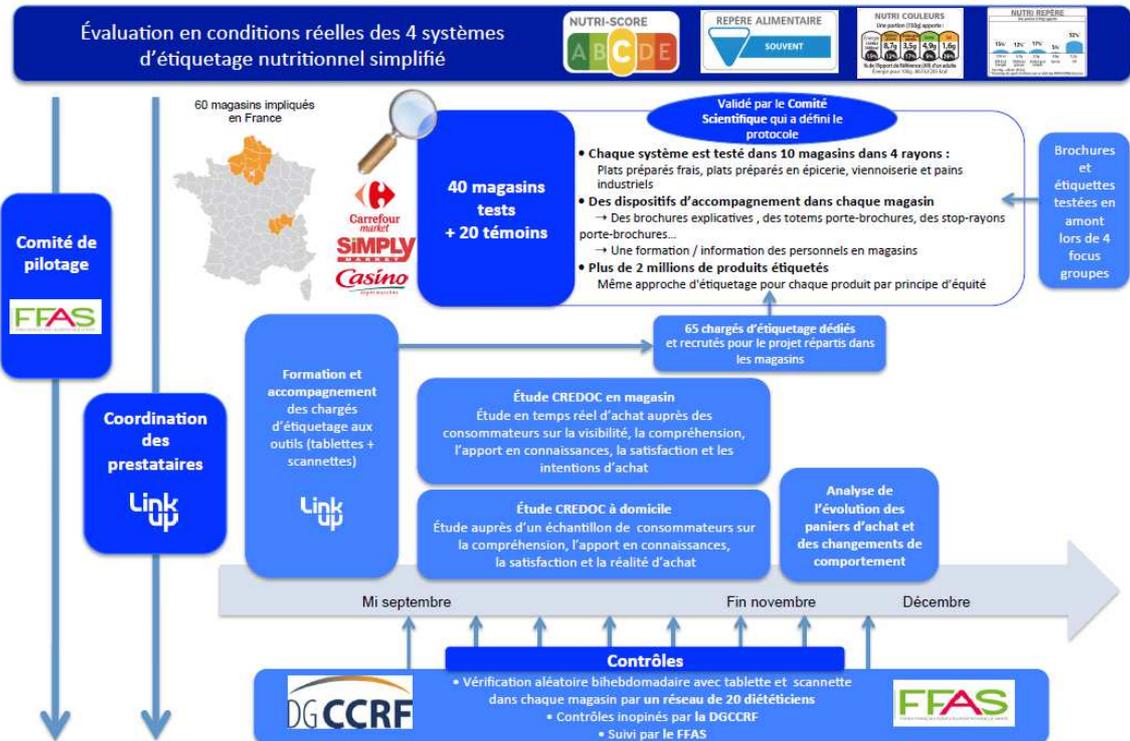
In June 2016, the FFAS carried out a preliminary qualitative study to optimise implementation of the quantitative and qualitative studies.

2.4. Operational system

The system was implemented by high-level teams.

The FFAS, the operational project bearer, carried out all the necessary preparatory work and called upon service providers that were co-ordinated by the Link Up agency, and that worked in conditions that enabled possible human error to be kept to a minimum. For example, dietitians were tasked with checking the presence and accuracy of labels affixed in shops by people carrying out the task of labelling.

Dispositif opérationnel



2.5. Progress of the experiment

The experiment started in shops on 26 September, and was completed on 4 December 2016.

A few figures

- 4 systems tested over 10 weeks of study under actual conditions in 60 shops (including 20 control shops) drawn randomly by the scientific committee, ensuring that 50% of them were situated in areas with high populations of low-income individuals.
- 4 regions were chosen:
 - Ile-de-France (Greater Paris area)
 - Hauts-de-France (Nord-Pas-de-Calais + Picardie)
 - Haute-Normandie
 - Rhône-Alpes (Ain, Loire, Rhône)
- 3 participating brands (AUCHAN, CARREFOUR, and CASINO)
- 4 ranges covered in accordance with the protocol drawn up by the scientific committee:
 - fresh delicatessen products
 - mass-produced baked goods
 - mass-produced breads and pastries
 - ready meals in tins
- 29 industrialists and generic brands from the three brands, i.e. 1 298 product references
- 65 labellers
- At the end of 10 weeks, 1 748 503 labels affixed by labellers, and the same volume of sales
- Checks carried out during the entire study by:
 - 24 dietitians
 - 7 auditors
 - the DGCCRF departments of the regions concerned

Information tools were put in place in all the shops, together with a brochure validated by the scientific committee to give customers an explanation of the objective of the experiment and the functioning of the graphic system tested in the shop.

The quality-control report drawn up by the 7 auditors considered that the experiment under actual buying conditions progressed without any major hitches and was therefore very satisfactory.

3. Results

To establish the results of the assessment of nutrition-information systems under actual buying conditions, the scientific committee referred to the CREDOC report for the qualitative elements, and to the report of the team tasked with processing data gathered in shops for the quantitative elements. The scientific committee adopted its report on 14 March 2017, and sent it to the steering committee in accordance with the governance protocol. The steering committee examined the report on 16 and 20 March, and a meeting of the consultation group was held on 17 March.

The reports by the scientific committee, CREDOC, and the data-processing group, as well as the implementation report by the FFAS, were placed on line on the web site of the ministry and on that of the FFAS on 17 March.

<http://social-sante.gouv.fr/prevention-en-sante/preserver-sa-sante/article/l-evaluation-en-conditions-reelles-d-achat-des-systemes-d-information-317290/>

<http://alimentation-sante.org/2017/03/resultats-complets-de-lexperimentation-en-conditions-reelles-dachat/>

3.1. Essential lessons

In light of the final scientific committee's final report, which is analysed below in points 3.2. and 3.3. of this report, the steering committee, in its meetings held on 16 March, 20 March, and 15 April, highlighted the following essential lessons:

- 1) 3 of the 4 logos (Nutri-Score, Nutri-Couleurs, and SENS) have a significant effect on the consumers' purchases and for improving the FSA indicator. That result confirms that a logo on the front of products does have an effect on buying habits.
- 2) The only system with no quantitative impact, Nutri-Repère, was monochrome, which seems to show that colour has a decisive impact on consumers at the time of purchasing, since, moreover, the qualitative study shows that the score provides them with useful information.
- 3) A continuous scale makes it easy for consumers to rank products (for Nutri-Score, the scale was continuous for the colours from green to dark orange, as well as for the letters A-B-C-D-E; for SENS, it was continuous by the indication of frequency, but not by colours).
- 4) Qualitative studies highlighted the demand from a large proportion of consumers for more information than was provided by the analytic logos (Nutri-Couleurs and Nutri-Repère) relative to the synoptic logos.
- 5) They also highlight a risk of errors in reading; for example, some consumers interpreted the colour green to mean an eco-product.
- 6) A detailed examination brings out the advantages and disadvantages of each system, but the continuous and colour-based scale carries the day in meta-analyses.
- 7) The effects observed are accentuated in people making the least expensive purchases (indicator based initially on average expenditure, then on the lowest average purchasing prices), of whom, working in conjunction with the scientific committee, it can be said that they are, in very large measure, people with the lowest levels of income.
- 8) The qualitative and quantitative studies show their value and feasibility for measuring the impact of nutrition labelling on the FSA score under actual buying conditions.

3.2. The scientific committee's conclusions on the quantitative study

The scientific committee's conclusions based on the quantitative study are as follows:

- It found that the operation was a success, since its results allowed objective answers to be given to the questions asked.
- **As regards the ability of nutrition-information systems to bring about modifications in consumers' buying habits, the answer is clearly YES** – Three of the

systems tested (Nutri-Couleurs, Nutri-Score, and SENS) have an unambiguously positive effect with respect to the criterion chosen by the scientific committee, i.e. the FSA score.

- **Thus, Nutri-Score lowers the score FSA by -0.267 point, Nutri-Couleurs by -0.233, and SENS by -0.198, over an average FSA score of the order of 6.** Only Nutri-Repère has a non-significant impact (it even very slightly lowers the nutrition score by +0.027).
- **To understand the scope of that effect, the result must be read in the context of the average FSA score** of observed consumer purchases, of which the order of magnitude is 6 points – In percentage terms, the improvement would therefore be of the order of 4%, a little more for Nutri-Score (4.45%), a little less for Nutri-Couleurs (3.9%) and SENS (3.3%)³.
- **In addition, that positive effect by the three effective systems is potentially favourable in terms of public health.**

The demonstration here is an indirect one, but the scientific committee wishes to restate the fact that it chose the FSA score as a judgement criterion because it is an indicator validated by works that used a cohort of significant size to establish its link to the occurrence of cancers, cardiovascular diseases, metabolic syndrome, and excess weight.

- **That result is all the more important because the effect had never previously been shown under actual buying conditions in shops, life-size and in a natural context.**
- **The combination of multiple approaches explored systematically** (by product categories, purchaser categories, etc.) brings out **a fairly clear overall superiority for Nutri-Score**, which, when the various measurements were taken and contrary to the other systems, never caused a degradation in the nutrition quality of the purchases.
- **Nutri-Score's advantage in light of the FSA score is even more marked when one specifically observes the behaviour of consumers who buy the cheapest products.**

3.3. The scientific committee's conclusions on the qualitative study (CREDOC)

The CREDOC study's objective was to estimate legibility, comprehension, interpretation, and consumers' buying intentions:

- The consumers surveyed declared that the **Nutri-Score and SENSE systems were the most visible.**
- Comprehension-test performances were good for **Nutri-Score and for SENS**: 92.4% of individuals ranked the three products correctly with Nutri-Score, and 84.1% with SENS, which is a statistically-significant difference – However, Nutri-Couleurs (29% correct rankings) and Nutri-Repère (16.6%) had no significant impact on the ability to rank the three products correctly, and even had an impact that was contrary to the objective.
- Between the two synoptic systems, **Nutri-Score's design and colours** allowed for easier ordering of the categories relative to one another than SENS's design and colours.

³ The percentages were estimated by the steering committee on the basis of data drawn from the scientific committee's report.

- **The synoptic systems offered more help in decision-making**, because they enabled consumers to rank the products unambiguously. **The analytic systems were less effective, and could lead to erroneous behaviour in consumers, especially those with a lower level of education.** Between the two systems, Nutri-Score seems a little more visible than SENS, and its use is more effective.
- One of Nutri-Score's few weak points was that 28% of respondents felt that a green label showed that the foodstuff was the product of organic farming. The scientific committee felt that it would be useful for the labels to carry the wording "*A Nutri-Score of A or B (green labels) does not guarantee that the product is the result of organic farming*".
- **The two analytic systems tested give more of a response to an objective of illustrating the compulsory nutrition declaration, which must, of course, be maintained.**

3.4. The steering committee's additional observations

The steering committee also emphasised the following points:

- As the scientific committee emphasised in the body of its report, the disjointed analysis between labelled and unlabelled products showed that the presence of logos also had a significant effect on non-labelled products in the ranges concerned by the experiment. That can be described as a halo effect. It tended to show that even a voluntary system could be efficient on a family of products, once a sufficient portion of the products was labelled. Thus, a significant rate of coverage needed to be sought for its direct as well as its indirect effects.
- Generally, a sufficiently significant rate of coverage of products would be a determining condition for a logo's effect on public health.
- Labelling had no effect on consumers considering price when buying products.
- The qualitative study showed that the level of education (the level between the most and least educated) played a role in knowledge of nutrition, but it was less significant for ranking products.
- The qualitative study tended to show that synoptic logos on the one hand, and analytic logos on the other, played to different registers: ranking for the former, additional information for the latter. However, in the quantitative study, Nutri-Couleurs came in close behind Nutri-Score.
- A solution had to be found to avoid the ambiguity over the colour green.
- Some members of the steering committee observed that since the autumn of 2015, the 5-C logo, which became Nutri-Score⁴, had enjoyed very large media coverage that gave it a reputation leading to some consumers paying it more attention than to the other logos. When questioned on that point, the chairperson of the scientific committee indicated that the committee had raised the question, but had concluded that the statistical observations did not lead to thinking that such an effect had had an impact.

⁴ The version most frequently put forward in the media was the original form with "5 lozenges" and colours that included red, a presentation that was slightly different from the one used in the assessment.

4. Examining regulatory questions

The steering committee's meetings and those of the consultation group highlighted legal questions and enabled them to be considered in depth.

To commit to the use of a logo, businesses operators indicated their will to avoid any risk of litigation. The Directorate General for Health, the Directorate General Competition, Consumer Affairs and Prevention of Fraud and Directorate General for Food also noticed the importance of this matter. The steering committee took note of these elements during meetings hold the 16th of march, 20th of march and 5th of april. An informal exchange took place with the representant of the DG Health of the European Commission who provided first elements of analysis, but indicated that there was no official position of the European Commission at this stage regarding questions of legal interpretation of the different logos tested in France. An official position will be submitted by written communication to the French authorities in may 2017.

Below are shown the different reviewed points and the main legal issues.

4.1. Legal texts

Nutrition information in the form of graphic symbols is covered by the following regulations:

- **Regulation (EU) No. 1169 / 2011, the so-called INCO Regulation**, on the basis of articles 35 and 36.

- **Article 35** lays down the conditions of implementation of complementary forms of expression and presentation to the nutrition declaration and provides that *"In addition to the forms of expression referred to in Article 32(2) and (4) and Article 33 and to the presentation referred to in Article 34(2), **the energy value and the amount of nutrients** referred to in Article 30(1) to (5) may be **given** by other forms of expression and / **or presented** using graphical forms or symbols in addition to words or numbers [...]."*

That option is valid for business operators, but in its point 2, the same article provides that public authorities may recommend one or more presentations of that type.

Article 14-II of the Law on Health provides that the logo recommended by the public authorities is in the context of article 35 of the regulation, so the question is to know if the logos that the logos deemed by the scientific committee to possibly have a significant effect on consumer behaviour, and Nutri-Score in particular, come under the scope of that article. The order to be made by the public authorities must follow that logic, because, under the terms of the decree of 19 July 2016, "it respects the provisions of article 35 of the INCO Regulation."

That is the case for Nutri-Couleurs, which uses a "symbol" to "express" and "present" the energy value and the amounts of the 4 to 6 nutrients covered by article 30(1) of the regulation.

However, the question of compliance with article 35 can be raised for the synoptic logos, since, by definition, the latter consist of another form of expression that combines the energy value and the nutrients listed in article 30, as well as other elements also provided for by article 30(2) (fibre, and, by way of vitamins, the percentage of fruit and vegetables for Nutri-Score; fibre, vitamin C, alpha-linolenic acid, and calcium for SENS).

A negative answer to that question would mean that if the public authorities were to choose a synoptic logo, the latter would not come under article 35, so it would not come under the scope of article 14-II of the law on modernising our health system and of the decree of 19 July 2016, thus under the public authorities' entitlement to pass an order recommending a logo.

A first interpretation of the provisions of Article 35 is to consider that Article 35 of INCO regulation does not exclude a complementary representation as a synthetic score, henceforth the article allows that energy value and the amount of nutrients are expressed by "other forms" than an analytical form.

- **Article 36** of the same INCO Regulation opens up the possibility for operators to act on their own initiative to place optional information on foodstuff labels. It sets in paragraph the conditions provided in articles 9 and 10 of INCO regulation that the information must meet. In particular, the information must comply with the "*requirements set in sections 2 and 3 of chapter IV.*" Section 3 includes article 35. The inference is that when the optional information covers the nutrition declaration stipulated in article 9, it must come under the context of article 35.

If businesses operators wish to themselves adopt a synoptic logo, the question is to know if that logo could come within the context of article 36 paragraph 2 (voluntary indications not mentioned in article 9 and 10). The answer is not necessarily the same, depending on whether the logo essentially summarises the elements of the nutrition declaration (which is the case with Nutri-Score) by combining them, or if it provides different, additional, optional information (e.g. the frequency of consumption, in the case of SENS).

If business stakeholders were to opt for a logo that was not covered by article 35 or by article 36, the question to be asked would be to know if, and under what conditions, it could be considered a nutrition claim covered by *ad hoc* EU regulations, thus requiring specific authorisation.

- **Regulation (EC) No. 1924 / 2006 on nutrition claims:** according to article 27(4) of that regulation, nutrition claims presented in the form of "*pictorial, graphic or symbolic representation, complying with the general principles of this Regulation*" appear in a positive (i.e. limitative) list that was drawn up when the Regulation was passed. When a Member State or stakeholders want to add a new claim to that list, the competent authority of the Member State concerned must first give the European Commission notification of that claim; in the case of France, the competent authority is the DGCCRF. A standstill period of 6 months must then be observed.. The question of the application of regulation "nutrition claims" arises notably because of the highlighting of a positive element of the food product, by using green colour, included in a color scale.
- **Directive (EU) 2015 / 1535, the "transparency" directive:** this procedure aims at informing the European Commission and the Member States. Its objective is to check that the measure is not an impediment to the free movement of goods: limiting "*the marketing or use of a chemical substance, preparation or product on grounds of public health or of the protection of consumers or the environment*" must be justified by forwarding "*the references of all relevant data relating to the substance, preparation, or product concerned*". The procedure laid out by that directive (with a standstill period of 3 months) applies when one is not specified in an EU text. It is on the basis of that provision that a group of European associations of producers appealed against the English Traffic Lights system, in particular stating that the colour red could be a barrier to exchanges.

The obligation to notify and the implementation of the directive call for the following comments.

Article 35 of INCO regulation does not explicitly stipulates for notification but simply explains that the State recommending such a form of presentation has to “communicate to the Commission the conditions of these complementary forms of expression and presentation” (article 35(2)).

However, this solution is only valid if the system selected by the Member State is clearly in the scope of article 35. In case of any doubt, it is necessary to notify. Then, the notification must be done according to procedures and forms planned by the directive 2015/1535.

The notification under the scope of this directive concerns technical rules and applies to any law, regulations or administrative provisions, influencing the product marketing within the European Union territory.

If a measure clearly falls under article 35, it can be voluntary implemented by business operators without referring to neither the Member State nor the Commission; It is the same for implementing a compliant system to article 36. For systems potentially under the scope of the regulation “Nutrition claims” a notification must be made in specific forms set up by the regulation itself.

4.2. Legal questions to date

In total, the various positions expressed have highlighted the following legal questions:

- 1°) Are the Nutri-Score and SENS synoptic nutrition-information systems covered by the terms of article 35 of the INCO Regulation?
- 2°) Do they or do they not require notification under Directive 2015 / 1535, since article 35, point 2 of the INCO Regulation only refers to communication to the European Commission subsequent to the recommendation by the Member State?
- 3°) Must the colour green in the synoptic logos be considered a positive claim under the claim regulation? Can it be so considered, even if the logo is inserted in a scale? Can a Member State recommend such a logo, and must the recommendation be notified pursuant to the regulation?
- 4°) Would a logo that seeks to combine a synoptic form of expression and an analytic form of expression be compatible with article 35 of the INCO Regulation, or would its synoptic aspect bring it under the claim regulation in spite of its analytic aspect, especially if it contains a green colour or even if it is monochrome?
- 5°) Does Nutri-Couleurs come under article 35 or article 36 of the INCO Regulation? Or does it come under another legal framework?

It was not for the steering committee to decide on legal questions, but it was able to observe their significance for the public authorities and the business operators, so that a sufficiently large proportion of the latter could effectively implement a recommendation.

5. The positions expressed by stakeholders

The results of the experiment under actual buying conditions did not lead to any challenge within the steering committee or at the consultation meeting of 17 March.

Five points generate consensus:

- **The need for easy-to-understand information that is additional to the nutrition declaration**
- **The will to implement that information in a concrete, swift manner**
- **The advantage and importance of a colour-based system**
- **Thus, the impossibility of choosing Nutri-Repère**
- **To avoid litigation risks, the need to ensure that the system chosen complies with the existing legal framework**

The first three points show that the consultation and the experiment enabled blockages to be cleared and stakeholders' previous positions to develop strongly.

It is henceforth certain, and essential, that regardless of the solution chosen, information for consumers will be improved in a very short period of time. However, divergences remain to be overcome.

❖ **The positions of industrialists**

1) The National Association of Agri-Food Industries (ANIA) emphasised the following points:

- Most industrialists are ready to implement a simplified nutrition-information system on their products.
- All the businesses emphasise the need for the chosen system to comply with European regulations and with the law on modernising the health system. On 28 March 2017, ANIA sent a set of legal questions to the European Commissioner for Health. At a meeting of the steering committee held on 16 March, she indicated that she had decided not to proceed with the complaint made to the European Commission on 20 February against the "Traffic Lights" (*cf.* 1.2.).
- All the businesses want a single Europe-wide system.

2) A group of businesses, including the six large international groups and members of Alliance 7 as well as SMEs from other sectors, indicated that its choice was the Nutri-Couleurs system and that it intended to consider its improvement in a second phase. That thought process would aim at including the idea of portions. The large international groups specified that they would implement Nutri-Couleurs (*cf.* their press release of 8 March 2017).

Those businesses argue that the Nutri-Couleurs results are very close to those of Nutri-Score in the quantitative part of the experiment, and that in addition, Nutri-Couleurs provides analytic information that the CREDOC study shows is deemed useful by a sizeable share of consumers. According to them, Nutri-Couleurs offers the advantage of being quick to implement and compliant with the INCO Regulation. If, as they wish, Nutri-Couleurs were chosen by the public authorities as the system recommended to business stakeholders, the European Commission could give a swift response to notification from the French authorities. If Nutri-Couleurs were implemented by the businesses themselves on the basis of article 36, that could be done without even requiring notification, for it would be covered by article 36. By not proceeding with the initial complaint made by ANIA and the European federations, the European Commission acknowledged that the system was in fact compatible with the INCO Regulation.

Those businesses also argue that Nutri-Couleurs is most likely to lead to a logo that is harmonised EU-wide, following the work of the European Commission in 2017.

They indicated that in France, they represented 11% of the food products concerned. Alliance 7 members (except for those international groups) account for 9%.

3) Danone expressed its preference for a synoptic, colour-based, interpretative logo that receives the most consensus, and it expressed its opposition to the idea of portions.

4) Some producers (the LDC agri-food group) indicated their support for the SENS system. Industrialists who manufacture generic products for distributors would necessarily have to follow the position of each distributor.

5) Some industrialists indicated that they were ready to implement a logo swiftly.

❖ **The positions of distributors**

1) Most distributors, represented by the FCD, are moving towards a synoptic system, the “improved SENS” (see presentation further on) (

They argue that in spite of the limitations of its initial graphic presentation, in the experiment, SENS obtained results close to those of Nutri-Score. Accordingly, they propose improving the graphic design of SENS to take account of the results of the assessment under actual buying conditions: the range of colours would be modified to enable consumers to perceive a continuous colour scale; each packaging would now include not just the logo relating to the product, but all four logos, with a magnifying-glass effect over the product’s logo.(see presentation further on)

The FCD indicated that 5 distributors (Carrefour, Auchan, Casino, Monoprix, and Système U) stated their interest in a system that, by doing so, would draw close to some of the features of Nutri-Score. They represent a significant proportion of market share in small and large shopping centres (50%), as well as generic brands representing, for example, of the order of 35% of the overall market in groceries and fresh products in hypermarkets and supermarkets.

2) As part of the consultation group, the Leclerc Group indicated that it would put in place a system in its drive-thrus by the end of the year, and that initially, it would not affix any logo to the packaging of products in shops. The group indicated that it was joining the consultation and that if a system arose through consensus, the group would implement it.

❖ **The position of consumer associations**

For the UFC-Que Choisir and the CLCV, it is important to take account of the results of the assessment under actual buying conditions, both for its quantitative aspect and for the CREDOC study. They support a scalar, colour-based synoptic system, but, above all, not including the idea of portions. Consumer associations want there to be a single system to avoid the cacophonic effects observed in other countries. In addition, and for more expert consumers, the two organisations are in favour of giving additional information in analytic form.

All the various positions, in addition to the concern that simplified nutrition information should be implemented quickly, also show concern for improving the systems initially put forward, taking account of the results of the experiment and in compliance with European regulations. Each party suggests that the system initially proposed should be improved if needed: “improved SENS”, “Nutri-Score” modified to give “Nutri-Score +”, and the “second stage” of Nutri-Couleurs.

6. Choice of nutrition logo

In accordance with the decree of 19 July 2016, the public powers will pronounce on the system to be recommended.

This report by the steering committee presents them with a set of items to contribute to the decision-making process: the quantitative and qualitative results of the experiment, described in point 3, the legal questions analysed in point 4, the positions expressed and possible suggestions for improvement described in point 5, and the prospects for effective implementation of the chosen logo in terms of field coverage as well as swiftness of implementation.

One logo, Nutri-Repère, has not been chosen because of its poor results in the assessment under actual buying conditions.

Of the 3 other logos tested, improvements have been suggested for two of them (Nutri-Score and SENS), with the aim of drawing the conclusions of the overall results of the experiment, which leads to analysing the advantages and disadvantages of 5 systems.

6.1 Criteria to be taken into account.

To recommend one system, the ministries will commit to:

- Take into account the results of completed surveys, regarding the compared impact of each system in terms of information for consumers and public health. Particularly, they notice that Nutri Score system is classified first for a number of parameters of quantitatives and qualitatives studies and they have the most favorable impact for people who buy cheapest products (among which we include the disadvantaged populations, an essential target of the survey). The Minister of Health approved Nutri Score on the 15th of March.
- Ensure compliance of the system of nutritional information that public authorities will recommend with the legal framework.

The recommendation could concern either a system tested during the evaluation in real purchasing conditions, or a system adapted to the conclusions of the experiment, as discussed in the meeting of the steering committee the 20th of March, (see presentation further). If the choice is made on an adapted system, it will be necessary to check if the system complies with requirements from article 35 of the INCO regulation, notably (a) and (d) requiring the complementary form of expression recommended by the member state to be based on valid scientific surveys; notably for consumers.

6.2 The systems tested: Nutri-Score, Nutri-Couleurs, and SENS

The elements provided on the positioning of business stakeholders with respect to the systems tested are given based on the current state of information made known to the steering committee. Some relate to official announcements (the position of a professional body, or an announcement made during a meeting of the steering committee or of the consultation group), others relate to announcements made in the media. In a sector that includes a very large number of businesses, uncertainty remains over the attitude of a significant portion of them.

❖ Option 1: Nutri-Score

<u>Nutri-Score advantages</u>	<u>Nutri-Score disadvantages</u>
<ul style="list-style-type: none">➊ Scalar colour-based synoptic system➋ System that obtained the best results in the experiment under actual buying conditions (shop-based experiment) as having the best ability to allow products to be ranked, especially by people who buy the least expensive products.➌ Close to the 5-C system that is the subject of several national and international publications, in peer-reviewed journals, concerning its impact on buying habits and the link between a fall in the FSA score and a reduction in pathologies (cancer, excess weight, and cardiovascular diseases)➍ In accordance with criteria laid down by consumer associations (a colour-based synoptic system with a scale) <p>→ Business operators that have indicated their intention to implement this logo to date: Intermarché and Fleury-Michon</p>	<ul style="list-style-type: none">➊ Uncertainty over its compatibility with the INCO Regulation and with the claim regulation➋ Question raised over its notification to the European Commission➌ Does not meet the request from some consumers, who want detailed information➍ Possible confusion over the colour green (with organic products, good-tasting products, etc.)

❖ Option 2: Nutri-Couleurs

<u>Nutri-Couleurs advantages</u>	<u>Nutri-Couleurs disadvantages</u>
<ul style="list-style-type: none">➊ Complies with article 35 of the INCO Regulation➋ Also complies with article 36, in which case it can be applied immediately➌ Certainly greater perspective of being extended Europe-wide, because it has already been implemented in Great Britain and widely in Ireland and by a Spanish brand; other European countries would also commit themselves to this system➍ Significant results in the quantitative part of the test, and considered useful in the qualitative part of the test <p>→ Supported by many businesses, including the six large international groups (Nestlé, Unilever, Mars, Mondelez, Coca-Cola, and PepsiCo), as well as by at least a part of the 300 businesses in Alliance 7 and businesses from other sectors.</p>	<ul style="list-style-type: none">➊ In the experiment, results that were significant but slightly lower than those of Nutri-Score in the quantitative part of the assessment, by reason of a lower impact on its ability to rank products by their nutrition quality and for those who buy the least expensive products➋ Non-compliant with the criteria chosen by consumer associations and distributors in the initial design brief of consumers and distributors

❖ Option 3: SENS

SENS advantages

- 📌 **Colour-based synoptic nutrition logo**
- 📌 **Frequency of consumption** is mentioned, which appears to be supported by consumer associations
- 📌 Significant effects in the assessment under actual buying conditions in shops

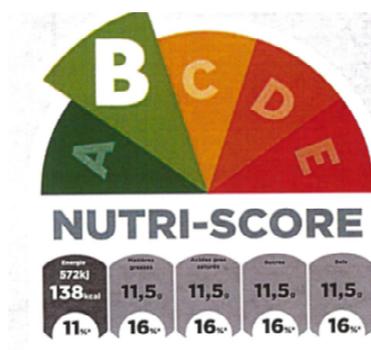
SENS disadvantages

- 📌 Results lower than those of Nutri-Score in the quantitative part of the assessment, especially for populations who buy the least expensive products
- 📌 Uncertainty over **its compatibility with the INCO Regulation for its synoptic part**, and with the **claim regulation because of its green colour**

→ Supported by the FCD, thus potentially by a majority of distributors and some industrialists

6.1. The improved systems

❖ Option 4: Nutri-Score modified and supplemented by analytic elements (i.e. Nutri-Score +)



This new graphic design would include two parts: a semi circle showing with colors and letters the synthetic score of the product, and below this semi circle, pictogrammes emphasizing the energy value and of four nutrients according to a graph inspired by NutriColours but monochrome. Between the two parts, would appear a Nutri Score banner designed to explain the signification of the logo for consumers and to draw their attention.⁵ Such a combination would add an analytical part to a synthetic system and would complete the classification effect with complementary analytic information, expected by some of the consumers.

⁵Following remarks done by the steering committee on the 20th of March, the Directorate General for Health indicated that the graphic design could be improved. The analytical basis and the synthetic expression could be designed to better match.

Nutri-Score + analytic advantages

Nutri-Score + analytic disadvantages

➊ Provides detailed information in addition to the synoptic logo

➋ The analytic part of Nutri-Score aims at satisfying the requirements of article 35 of the INCO Regulation

➌ Summary of the positions of several logo promoters

➍ Untested system

➎ Uncertainty over its compatibility with article 35 of the INCO Regulation and with the claim regulation for its green colour

→ No official position by operators. For consumer organisations: questions over its comprehension by consumers, and over the lack of colours in the analytic part

❖ Option 5: “improved SENS”



Improved SENS advantages

Improved SENS disadvantages

➊ Colour-based synoptic nutrition logo improved by the addition of elements (scale, magnifying glass, and colour)

➋ Frequency of consumption is mentioned, which appears to be supported by consumer associations

➌ System aimed at drawing the conclusions of the experiment, but not tested

➍ Uncertainty over its compatibility with article 35 of the INCO Regulation for its synoptic part, and with the claim regulation for its green colour

→ Supported by the FCD, so potentially by a majority of distributors, and some industrialists

7. Conclusion

As a supplement to the items provided in this report, the steering committee highlights the following points in conclusion:

- The consultation and the experiment allowed positions to be unblocked that seemed intransigent, and, in all cases, they will enable consumer information to be improved.
- The experiment enabled essential results to be obtained to inform the public authorities and the operators. The data gathered under actual buying conditions will also enable subsequent, more complete operations that will provide a considerable mass of information on consumer behaviour.
- For the purpose of the decision by public authorities and of stakeholders' final positions, the answers to the legal questions analysed in this report are essential, and even determining at this stage.
- In particular, on those legal answers depends the possibility that the recommendation of a synoptic logo by the public authorities may come within the framework of the INCO Regulation and of the law on modernising our health system.
- All stakeholders agree on a single, colour-based, system on the front of products, significantly improving the nutrition quality of purchases, legible, visible, and easy to interpret, facilement compréhensible, especially by disadvantaged people. In addition, distributors, consumer associations, and some industrialists favour a synoptic presentation that is in line with their original design briefs. Most industrialists favour an analytic presentation.
- In making their decision, the public authorities will rely on the results obtained from the experiment under actual buying conditions. Business stakeholders will be sought to join the recommended system, the aim being an implementation that is as wide-ranging and as swift as possible by operators, with a view to improving the health of French people.
- The data gathered in the course of this experiment of unprecedented scale provide the public authorities with a solid foundation for having an effect in the EU negotiations on a European logo to be initiated at the end of 2017. Millions of buying transactions have been observed, and a life-size assessment has been made of the effect of the logos. The capacity for discussion that flows from it must be capitalised on as quickly as possible with the EU authorities and with other Member States.
- The public authorities must also initiate a wide-ranging programme of consumer information on the logo that they will have chosen, so that it is seen and understood by the largest possible number of consumers for it to have the desired positive effect on public health.

This report was passed unanimously at the meeting of the steering committee held on 5 April 2017.