WHY “NO PALM OIL” LABELING MISLEADS THE CONSUMER
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Abstract
The EU strategy regarding food information to the consumer, formulated under the leadership of DG SANTE, calls for transparency, verifiability, and truthfulness. The ultimate goal is to protect the consumer from making the wrong purchasing decisions. In pursuit of this goal, comprehensive new legislation came into force last December. The spirit of this regulation as well as its concrete procedures question the current practice of putting “No Palm Oil” (NPO) labels on food products. Such labels imply that consumers’ interest is best served if products containing palm oil are avoided. This claim rests on the assumption that palm oil has negative effects on consumer health and the environment. Scientific evidence and market realities do not confirm these claims. Therefore, NPO labels are in all likelihood illegal under current EU legislation and should be banned. However, the current lack of enforcement within the EU on such practices could jeopardize the very principles that govern food labeling legislations.

1. Introduction
In its White Paper on Food Safety¹, the European Commission spells out its vision of how to protect the consumer. Policy and institutional reform is to be undertaken “with a view of achieving the highest possible level of health protection.” The goal is to give consumers better access to clear, comprehensive, and reliable food information.

In that context the Commission considers it imperative that “consumers have the right to expect information on food quality and constituents that is helpful and clearly presented, so that informed choices can be made.”

There are two key principles in the EU institutional framework working towards making this vision become reality: the Directorate General on Health and Food Safety (DG SANTE), and the European Food Safety Authority (EFSA). The main interface in communicating with the consumer is the information contained on the labels of the food products.

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Therefore, the DG SANTE, formerly known as the Directorate General for Health and Consumer Protection (abbreviated as DG SANCO) in the year 2006 laid out its strategic approach to labelling in a document entitled Labelling, Competitiveness, Consumer Information and better Regulation for the EU. In that document, reference is made to the “Unfair Commercial Practices Directive (UCPD)”. The UCPD is “applicable to all business-to-consumer commercial practices, and would cover misleading aspects of labelling. Especially with reference to ‘commercial’, i.e. non-mandatory, labelling.”

The deliberations on these issues by the different stakeholders eventually resulted in a new legal framework: Regulation (EU) No 1169/2011 on the provision of food information to consumers. As the central piece of EU legislation with regard to questions of food labelling within the EU it is discussed in the next Section.

In light of the aforementioned the current practice of “No Palm Oil” (henceforth: NPO) labelling, primarily observed in France and Belgium today, runs counter to the strategic vision of the European Commission regarding consumer protection and transparency. In all likelihood it even violates current legislation on food labelling.

2. Food Labelling Regimes in the EU

A distinction must be made between mandatory and voluntary food labelling regimes. This distinction bears wide ranging implications for the entire food industry. The EU’s mandatory regimes are governed by Regulation 1169/2011. After all, years of preparatory work have gone into it. The EU financed several study projects (e.g. CLYMBOL – claims, symbols, consumers, and FLABEL - Food Labelling to Advance Better Education for Life) with the basic intention to understand how consumers perceive, interpret and react to food information.

Ultimately that was the impetus behind the new legal rules the Commission pursued. Scientific findings on consumer understanding and interpretation of as well as acting on the information on food labels, combined with the strategic goal of enabling the consumer to live a healthier live are the backbone of the new Regulation.

Extensive research has repeatedly shown that consumers are challenged to interpret food labelling correctly. They misunderstand, or confuse the information (for instance, consumers can usually not explain the meaning behind “best before” and “use by” labels), do not understand technical terms, or feel simply overwhelmed with the quantity of information provided. The following cartoon illustrates this dilemma.

Other research points to the neurological limitations consumers face in digesting information on food labels. The attention span can often be measured in milliseconds.

Both effects, together result in oversimplified or plain wrong conclusions the consumer draws, and worse still, what consumers base their purchasing decisions upon.
So, for example, one study conducted in Ireland observed that of all consumers who agree with the statement “salt is bad, sodium is good”, only 8.8 per cent actually know the difference between the two. Likewise, there is a common confusion between “energy” and “calories”: while only 6.5 per cent of those surveyed know the difference, the vast majority subscribes to this statement: “Energy gives you vitality and calories make you fat”.

In summary, the problem at the food-label/consumer interface can be described as one where the consumer draws the wrong conclusions from the information on labels and, as a consequence, makes buying decisions that do not advance the goal of consumer protection envisioned by the institutions of the EU.

The new legal framework erected by the Commission under the lead of the DG SANTE is in large measure a reaction to this state of affairs. The new regulation replaces and combines several pre-existing rules on labelling and advertising of food products tuffs.

Annex VII, Part A, and Numerical 8 to Regulation 1169/2011 addresses vegetable oils. As of December 13, 2014 it is now mandatory to indicate the specific origin of all refined oils and fats of vegetable origin in general. All hydrogenated oils and/or fats must be accompanied by the expression of either “fully hydrogenated”, or “partially hydrogenated”.

In other words, to be in compliance with the regulation, producers must show on the label what kind of vegetable oil or fat (e.g. palm, sunflower, coconut, or rapeseed) has been used. It goes without saying that a label simply stating “No Palm Oil” does not meet the requirements of Regulation 1169/2011.

How far-reaching the new requirements on food labels are is most obvious in Article 7 of Regulation 1169/2011 that deals with fair information practices. It states in Numerical 1 (c), 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 emphasizing the presence or absence of certain ingredients and/or nutrients” (emphasis added).

While, strictly speaking, regulation 1169/2011 pertains only to the governance of mandatory labelling regimes, it would be counterintuitive and impossible to explain to consumers why the logic contained in the regulation should not also apply to voluntary labelling regimes.

This conclusion is all the more imperative since over the past ten years voluntary labelling schemes in the EU have grown significantly. A comprehensive study identified more than 900 voluntary schemes across the EU 27 plus Iceland and Norway. The report, published in 2013, explored the extent to which food labelling schemes:

- comply with the Unfair Commercial Practices Directive (UCPD),
- are in line with the Commission Communication on EU best practice guidelines for voluntary certification schemes for agricultural products and foodstuffs, and
- provide the consumer with transparent and trustworthy information.

The report differentiates two types of labelling schemes: certification and self-declaration schemes. The defining difference between the two is that the former relies on a third-party attestation procedure, while the latter does not. NPO labelling schemes clearly belong to the latter category.

3. Alleged Harmful Effects of Palm Oil: an overview

In the final analysis, the question of whether or not NPO labelling misleads the consumer turns on the negative properties attributed to palm oil. These are often perceived to broadly fall into two categories: health effects from consuming palm oil, and negative environmental impact through the production of it.

3.1. Environmental claims

According to the FAO, United Nations’, the share of palm oil production in total vegetable oil production is more or less stable at 34 per cent. Expressed in million metric tons this amounts to about 54 million, closely followed by soybean oil. By comparison: the most important vegetable crop in Europe, rapeseed (canola), reaches a production volume of no more than 18 million metric tons.
In that context it is important to note that the cultivation and production of palm oil is significantly more efficient than that of any other vegetable oil. Its productivity, measured in yields per area of agricultural land used, is significantly higher than that for other oils. At the same time, the need for fertilizers or pesticides in cultivating the oil palm is significantly lower than, for instance, that of canola.

It should be stressed that these are important considerations when assessing the environmental impact of palm oil production. Consider the fact that what has been receiving most attention in European media and public opinion is the connection made between palm oil production and the destruction of rainforests. As the narrative goes, the increasing hectares of oil palm plantations in countries like Malaysia or Indonesia for land, is responsible for deforestation and the vanishing of wildlife habitats especially those of some iconic and endangered species. There are no numbers to indicate what it would mean in terms of land use if another vegetable oil like sunflower or rapeseed (others varieties like olive oil could simply never reach the required output on a global scale) were substituted for palm oil. It is fairly easy however to imagine the consequences: for instance, if soybean production where to be increased significantly in order to replace palm oil, the detrimental effects on land areas covered by rainforest would be worse. This is explained by the lower per hectare productivity of soybean oil compared to palm. Similarly, the land area necessary to cultivate rapeseed at a scale sufficient to replace palm oil simply is not available in Europe.

3.2. Health Claims
As far as the impact on consumer health from palm oil consumption is concerned, the assessment is no less complicated. Frequently, palm oil is accused of being unhealthy primarily because it is comparatively higher saturated fatty acids (SFA) content. However, the evidence on detrimental health effects caused by SFA is inconclusive at best and at the crossroads given emerging evidence associating risk for degenerative diseases from excess carbohydrate consumption as opposed to SFA. Similarly evidence from a large number of human dietary interventions has shown no adverse impact on heart disease risk due to palm oil consumption. This was comprehensively reviewed in a series of articles in the Journal of the American College of Nutrition special supplement JACN 2010, Volume 29 (3) and further cemented by a meta-analysis of the palm oil human studies by Fattore et al. In addition, the positive health effects of palm Tocotrienols, the strand within the vitamin E family that is found in palm oil, have since been well documented for its numerous health benefits including its ability to modulate brain white matter lesions which is associated with stroke prevention.

This brief paper therefore cannot delve into the nutritional details of vegetable oils in general, and palm oil in particular. However, published evidence suggests palm oil as a wholesome, safe and essentially a neutral fat for human consumption and the hype regarding adversity through its higher saturated fatty acid content has not been proven by numerous well designed and executed scientific interventions.

Another issue to be considered is the fact that palm oil is far from being used only in food production. It is frequently found in all kinds of products like candles, detergents and even biofuels. A significant and quickly rising share goes into biofuels. To the extent that this is the case, the notion that eating less palm oil would save the rain forest is, of course, nonsensical.

The preceding paragraphs aim at illustrating the complicated realities in today’s global market for vegetable oil. Numerous aspects are interwoven and together form an intricate web of relationships and dependencies. When assessing the comparative performance of palm oil vis-à-vis other vegetable oils, an in-depth analysis is mandatory. A plethora of factors have to be taken into account like yields per acre of land, nutritional details, and so forth.

Anything less would be misleading, as explained in the sections below.

4. Are NPO Labels a Misleading Marketing Technique?
It is the hypothesis of this paper that making a general judgment that palm oil is inferior compared to its competitors of vegetable origin because of its negative impact on the environment and/or consumer health does not hold up to scrutiny. Therefore, the charges
implicitly levelled against palm oil by NPO labelling must be considered misleading to the consumer.

The reason lies in a common sense analysis of what effect the NPO label has on the consumer. The signpost nature of an NPO label bluntly plants in the mind of the consumer the assumption that avoiding the purchase of products containing palm oil somehow is beneficial to the environment as well as to their own health.

Such a claim must be considered misleading. On further contemplation it then appears sensible to treat NPO labels not as an attempt of food producers and distributors to provide objective information to the consumer in order to aid them in their purchasing decision. Instead, it is a marketing technique, trying to jump on the bandwagon of consumer sentiment that wishes to protect the own health and the tropical rainforest as well.

Because such a causal relationship cannot be established, however, the current practice of NPO labelling appears illegal given the current legislative framework within the EU. First of all it stands at odds with the new Regulation 1169/2011, which entered into force on December 13, 2014. The implicit claim contained in NPO labels, namely that alternatives to palm oil would be superior, now appears even more misleading than before. The fact that since December 2014, labels and processed foods must indicate which kind of vegetable oil has been processed, the parallel use of an NPO label would make until then implicit assumption that palm oil is inferior, indeed explicit.

In addition, the current practice might not only violate EU legislation, but national laws as well. For both there are precedents. For instance, the plaintiff won a case in which producers from the Ivory Coast sued Système U, a French supermarket chain, because of a television advertisement that promoted French Fries “sans huile de palme”. The ad shows a monkey in a cage after bulldozers had destroyed his natural habitat. The Paris Commercial Court ruled that this was misleading and denigrating to the producers of the Ivory Coast and Système U had to take it off the air10.

In another case11, German dairy producer Ehrmann had to remove the claim “As important as your daily glass of milk” from one of its products. The European Court ruled that this claim implied a health benefit that is not sufficiently backed-up by scientific evidence. But it is precisely that kind of scientific support that the Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods12 calls for.

One last argument in support of the hypothesis of this paper, that the current NPO labelling practice is designed to mislead the consumer. It can be found in research investigating the interaction between food labels and consumers. Studies tracking the eye movements of customers have conclusively shown that the attention span of a person evaluating the product must be measured in milliseconds. Of course this is not enough to absorb nutritional information on labels and therefore marketers have resorted to the signpost variety. Compared to nutritional information, NPO labels can be described as “loud”: large font, exaggerated use of colors. This is undesirable not only because the dominating NPO label itself contains information that is misleading, but it also averts the attention of the consumer away from information he or she might find useful in their purchasing decision.

5. NPO Labelling Case Study: France and Belgium

The current practice of NPO labelling in France and Belgium traces back to the year 2008, when French retailing chain Carrefour started to substitute palm oil in potato chips with sunflower oil. Two years later the Casino Group followed suit, sign-posting products with a “sans huile de palme” label.

Since this marketing ploy proved popular with consumers, it quickly became a trend. Therefore, in 2012 a quantitative research study was commissioned to assess the number of products with an NPO label in French supermarkets. The same research was conducted the following year in Belgium. The complete study, covering results collected over a three-year period (2012-2014) surveyed a total of 26 representative retail chains, 20 in France and six in Belgium. All stores were located in the Paris and Brussels metropolitan areas.
In short, the study results show an explosive growth of foodstuffs on display in shelves in Paris and Brussels marked with NPO labels. In 2014 a total of 687 products could be identified, up from only 189 in 2012. This is over 3.6 times more than only two years ago. (Figure 1)

**Figure 1: Growth of Products with No Palm Oil Labels, 2012-2014**

**Figure 2: Consumer Brands Share of Total Products Using the NPO Label**
This development was accompanied by a growing number of consumer brands using the NPO label. A total of 60 brands were identified. Figure 2 indicates each brand’s share of the total of products labelled NPO. It is interesting to note that in Figure 2, the category “Others” alone comprises 45 brands, together accounting for a total of 208 products. This is an indication of the bandwagon effect, where each brand is trying to participate in the trend with at least one product labelled as free of palm oil.

This outright boom in the use of NPO labels is flanked by aggressive advertising. Labels usually display large fonts on a coloured background as shown in Figure 3.

Some supermarkets have even resorted to the use of “shelf-stoppers” seeking consumers’ attention to make the customers aware of products displaying the NPO label.

Last but not least, television adverts claiming that the advertised product does not contain palm oil were put on the air. The following is an example of the Jacquet brand promoting bread. It ends with the effective full-screen display of a NPO label, and the speaker repeats the claim. (Figure 4 & 5)

**Figure 3: Examples of NPO Labels**

**Figure 4: Jacquet Brand With NPO Label**
6. Conclusion: NPO Labels stand at odds with current EU Regulation

From the factual examples highlighted, there is a case against NPO labelling. The main line of the argument runs as follows: NPO labels make the implicit claim that avoiding products containing palm oil benefits either the environment, or consumer health, or both.

This claim does not stand up neither to scientific scrutiny, nor to the realities found on the ground. Therefore it must be considered misleading in an ethical, and, given EU legislation in force since last December 2014, even in a legal sense.

In this context it is interesting to note that the Code of Federal Regulations of the United States of America, in its Title 16 on Commercial Practices, Chapter I (Federal Trade Commission), Subchapter B, Part 260, Section 260 (9), which deals with “Free-of-claims”, states that:

(a) A truthful claim that a product, package, or service is free of, or does not contain or use, a substance may nevertheless be deceptive if:

(b) The product, package, or service contains or uses substances that pose the same or similar environmental risks as the substance that is not present” (emphasis added).

Regarding the situation within the European Union it seems clear that the existing legal framework (in particular the Unfair Commercial Practices Directive in conjunction with Regulation 1169/2011) provides sufficient grounds for the conclusion that the current practice of NPO labelling must be banned.

The aim of the UCPD to ensure that traders do not unduly distort consumer choices indicates the direction to take. It is in the best interest of the EU consumer that actions be taken that prevent them from being misled into purchasing products that are no better (and, quite possibly, worse) regarding health effects, and that may cause greater harm to the environment than the production of palm oil does. When the practice of making unsubstantiated statements on foodstuffs continues to proliferate, the entire strategy espoused by DG SANTE of protecting and empowering the consumer is meaningless.

Seen from that perspective, calling upon the palm oil producers in Asia, Africa, or America to find a way to get the authorities to act is not a case of pandering to special interest. Instead it is genuine public interest. Transparency and consumer protection must be upheld inside the European Union that takes pride in the strength of its institutions. Continued and unabated use of the NPO label would only serve to demolish the very roots and principles upon which these institutions have been established.

References


