

CAN A QR CODE REPLACE TRADITIONAL PRODUCT LABELLING?*

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1. INTRODUCTION

A local Consumer Office of the Community of Madrid raises the following question to the CESCO: Can product labelling information be replaced by a QR Code?

2. ANALYSIS OF THE ISSUE

Historically, information about products included in their labelling has been displayed in written form on the label itself. Now, the question arises whether this information can be provided through a QR Code included in the product label. We must understand a QR code as a two-dimensional matrix of square dots that stores data information accessible to consumers through a reader. Nowadays, all smartphones come equipped with such readers.

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Labelling serves as a calling card of a product. It reflects the product's characteristics, origin, components, and various data that help consumers make better decisions according to their needs and preferences. This information allows consumers to compare products and make safe purchases. In Spain, General Law for the Defense of Consumers and Users includes among the basic rights of consumers– art. 8 – the need to provide correct information about goods and services: *d) Accurate information about different goods or services in formats that ensure accessibility, education, and dissemination to facilitate knowledge about their proper use, consumption, or enjoyment, as well as making optimal decisions for their interests.*

In Spain, we dispose of two basic regulations that govern product labelling: Royal Decree 1468/1988 approving the Regulation on labelling, presentation, and advertising of industrial products intended for direct sale to consumers and users, and Regulation (EU) 1169/2011 of the European Parliament and of the Council of October 25, 2011, on the provision of food information to consumers. Additionally, we have specific regulations govern labelling in other areas such as Royal Decree 1718/1995 of October 27, which regulates the labelling of materials used in the main components of footwear, the recent Royal Decree 192/2023 on medical devices, or Regulation (EU) 251/2014 of February 26, 2014, on the definition, description, presentation, labelling, and protection of geographical indications of aromatized wine products, modified by Regulation (EU) 2021/2117 of the European Parliament and of the Council of December 2, 2021.

To answer the question posed, we analyze the two main regulations on labelling in Spain.

2.1 Regulation on labelling, presentation, and advertising of industrial products intended for direct sale to consumers and users

This Regulation applies to industrial products, which are understood *to be any durable or perishable goods, articles, or objects resulting from an industrial process, intended for direct sale to consumers or users, or through their marketing in retail establishments (art. 5).* Cosmetics and sanitary products, pharmaceuticals, food products, handicrafts, products considered works of art or antiques, and all industrial products that have specific regulations in this area are excluded from its application.

The Regulation defines product labelling as *any written, printed, or graphic information relating to an industrial product that must be mandatory accompanying the product when presented for sale to the consumer.* Two key aspects should be noted in this definition: 1. From the beginning, it has been emphasized that the purpose of labelling is to provide the consumer with product information; 2. The mandatory nature of this information. It's compulsory to include information on the product as a measure of consumer protection.



Article 6 of the Regulation indicates that labelling must *incorporate, carry with it or allow, in a certain and objective way, effective, truthful and sufficient information on its essential characteristics*. Article 8 indicates that this mandatory information must be provided with clear, visible, indelible, and easily legible characters for the consumer. And it adds that *labels containing the mandatory data will be placed on the product itself or on its packaging, in a way that is perfectly visible to the consumer or user*. However, for durable products or due to justified space limitations, the information may be provided in brochures or in documents that accompany it.

The mention made by Article 6 of the Regulation is noteworthy and deserves attention regarding labelling, referring to three possible ways in which information can be provided: *incorporate, carry with it or allow effective information in a certain and objective way*. A QR Code on the product label, which directly provides consumers with the information required by regulations, could fit perfectly within these three verbs, at least in terms of "permit in a certain and objective way". The code allows access to information, and if it complies with the requirements of Articles 7 and 8 of the Regulation (mandatory information to be included in labels), it would not constitute a violation of regulations.

2.2 Regulation (EU) 1169/2011 on food information provided to the consumer

The Regulation aims to ensure consumer protection regarding food information, particularly concerning food labelling. Article 6 establishes that food intended for the final consumer must be accompanied by "food information" required by the standard. In this sense, "food information" is defined as *information about a food product provided to the final consumer through labelling, other accompanying materials, or any other means, including modern technological tools or verbal communication*. This definition opens the door for "food information" to be presented through technological means, not just through traditional labels, which implies that QR Codes would be permissible. In any case, the *food information must be precise, clear, understandable to the consumer, and easily accessible*. The QR Code allows consumers to access to food information at any time, and as an electronic label, it remains permanent, whereas a physical label can wear out.

The mention made by Article 12 about packaged foods, stating that *mandatory food information will appear directly on the packaging or on a label attached to it*, might raise doubts. The term "directly" could cause confusion since a QR Code requires a reader to display the information. Nevertheless, we must attend to the principles that inspire this Regulation. Consideration 51 refers to the need for "food information" rules to adapt to a *rapidly changing social, economic, and technological environment*. In this sense, Article 12 states that the Commission may decide, through delegated acts, that certain mandatory

mentions be made by other more suitable means than packaging or labels, provided that the same level of information is guaranteed.

3. CONCLUSIONS

In the current post-pandemic "new normality", we see how the use of QR Codes is fully extended and their integration into daily life is normalized. Although this tool was already known before the pandemic, after the restrictions were lifted, we witnessed the recurrent use of QR Codes in various contexts, as a preventive measure against contagion. Thus, menus at bars and restaurants transitioned from paper to electronic, requiring the use of QR Codes for access. Even the now-forgotten Covid passport included this code to display when required, confirming compliance with vaccination requirements.

The question raised here is whether this widespread use of QR Codes is also applicable to product labels. As we have indicated from the beginning, the purpose of labelling, and consequently its regulation, is to provide consumer protection. It aims to offer sufficient, clear, and objective information to enable consumers to make informed decisions. Traditionally, this information about products has been provided through labels attached to them, but technological evolution suggests an update to labelling practices. The amount of information, clarity, format, quality, etc., that a QR Code can offer is infinitely greater – and better – than what physical labelling on the product provides. The reason is simple: space. The labelling regulations, whether for industrial or food products, require that the fundamental information about the product to be provided to the consumer, clearly and accessibly, requiring a minimum font size and it be displayed on the main faces of the product. Often, this information is practically illegible due to the amount of data that must be included in a small space, making it less favorable for consumers. The current regulations in Spain on labelling, analyzed in these lines, do not impose any prohibition on the use of QR Codes to display product information. In fact, as we have explained, there are definitions or precepts in the regulations where the display of product information through a QR Code is perfectly suitable.

As the inspiring principles of the EU's regulations on the matter indicate, the European Union recognizes the need to integrate technological development into the social context and adapt consumer information to these innovations. However, it is true that, although the current legislation leaves the door open to the use of technology, there isn't yet a specific regulation for what we could call "electronic label". Nevertheless, in certain sectors such as the wine industry, this is already a reality. Regulation (EU) 2021/2117 authorizes for the first time the communication of mandatory information about wines through electronic labels. European sector organizations joined forces to create a platform, approved by the EU, known as *U-Label*, that allows any company in the sector



to provide mandatory information to consumers about wines or spirits through this medium. We are in a transitional period of two years until these new labelling rules become mandatory for all wines and aromatized wine products that are marketed in the EU. It will become mandatory from December 8, 2023.

In conclusion, there is currently no general regulation that governs or obliges the use of the "electronic label," as if it is the case in the wine sector. Although many pilot projects are already underway in the EU to implement this measure, it seems that its regulation will likely arrive in the near future. However, until then, we must refer to the current regulations, which do not prevent the use of QR Codes to display the mandatory information about the products; in fact, we find rules where this code fits perfectly. As the references to technological innovations in the regulations suggest, it's clear that the direction of European and national legislation is to include technological means as a support for providing this information. From the beginning we have stated that the main objective of labelling regulations is to protect consumer interests. The QR Code not only protects these interests but also allows information to be offered to the consumer with greater clarity and quality, undoubtedly improving the interests of consumer. Moreover, the use of QR Codes contributes to the achievement of the objectives of public health and environmental policies of the EU. In the current post-Covid society, QR Codes is an accessible and well-established medium, so including product information through this channel ensures a right balance between consumer and business interests, and provides easily accessible information.