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An ungovernable tool of government?

The problematic use of labels in public health policies

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An ungovernable tool of government?
The problematic use of labels in public health policies[1]

Abstract

The popularity of labels as tools of government is growing in many policy areas. This working paper focuses on the creation and implementation of three different public labels in the public health field. Granted by the States or other public authorities, those labels reward distinctively organizations for their contribution to a public cause. Governance by labels relies on the mechanisms of market competition and of social distinction at play within a field, to orient actors towards options that governments consider to be in the public interest. This working paper nevertheless shows the difficulties to implement effectively that kind of soft policy tools: for them to affect firms' and consumers' behaviours, they have to integrate many conflicting objectives and interests at the same time, which is rarely the case. We actually show, in our three case studies, that governing the market through labels implies governing the labels themselves, by carefully selecting their grantee, promoting them to both consumers and companies, and struggling against other challenger labels or market intermediaries. It is not an uncommon paradox that these labels that are entrusted with such a high power of "changing the world", have been finally stripped of any power.

Keywords: Label; Public Health; Food; Behaviour; Company; Consumer

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Introduction

In the public health field (as in many other actually), one is struck by the intensive recourse to labels. Let's just take the example of one of the most significant public health causes – the fight against obesity – and consider the "Let's move" programme, chaired by Michelle Obama, in the United States (https://letsmove.obamawhitehouse.archives.gov/). This programme has prompted a media resonance beyond the borders of the United States. In addition to the design and distribution of nutritional guides, the program offered all schools that wanted to be recognized and be granted the label of "active schools" and local communities ("Cities, Towns & Counties") the opportunity to obtain the "Let's move" label. In France, the Ministry of Health and the former agency (now entitled *Santé Publique France*) in charge of health education and promotion (INPES) directly promoted the "WHO (World Health Organization) City" label. And the French Ministry of Health as well as the European Union granted some for-profit-firms what they considered the privilege of using their name (through a EC's label). The PNNS, a French government policy in the same area, had itself become a label, used to endorse what it considered "good actions" (the "PNNS city" label by the Direction Générale de la Santé or DGS). Public relations and prevention operations designed to induce consumers to turn toward trusted (label-bearing) products need to be "labelled" themselves. This way of saturating the field with labels is probably an indicator that major reshuffling is under way—an indicator, then, of intense uncertainty about the quality of the (new) actors investing the field and the (new) services and products circulating in it.

Nevertheless, the design and implementation of such an instrument is not that simple. Taking nutrition policy as a case study and focussing on three different labels, three main reasons can explain, as we will demonstrate in our paper, the poor results they can achieve. First, they pursue many different political objectives that can conflict with each other's and threaten the social efficacy of labels (the ability to affect individual and collective behaviours). Second, many different interests and logics (economic, marketing, public health, communication, just to quote the most salient ones) are supposed to smoothly cohabite (be embedded) in the label, a cohabitation thereof that is far from easy to reach: labels do not always become "boundary objects". Third and finally, even if those diverse objectives and logics can (in theory) accommodate to each others, the actual materialisation (design, form, colours, text, etc.) of this political and economic compromise is not smooth process and can turn out calling into question the instrument itself. In order to illustrate those difficulties, we will analyse three types of labels in the field of nutrition and obesity policy: a) health claims; b) nutrient profiling; and c) nutrition voluntary charters.

Three types of food labelling to promote public health

The nutritional charters are charters mutually agreed upon by the Ministry of health and voluntary food and retail firms, in which the latest commit themselves to improve the nutritional quality of their products (less sugar, less fat, less salt, etc.) in exchange of a label on their products, mentioning that they are a "company engaged in a nutritional improvement effort encouraged by the state (PNNS)". It's worth noticing that the label sanctions the improvement made by a firm within a certain period of time, but does not help the consumer distinguishing between firms or products[2].

The nutrition and health claims are "*any message or representation, which is not mandatory under Community or national legislation, including pictorial, graphic or symbolic representation, in any form, which states, suggests or implies that a food (…) has particular beneficial nutritional properties (… or) that a relationship exists between a food category, a food or one of its constituents and health (…or) that the consumption of a food category, a food or one of its constituents significantly reduces a risk factor in the development of a human disease*" (1924-2006 European Regulation). Since the 1924-2006 European Regulation, all the authorized claims are registered on a list adopted by European Parliament. The authorization is granted after the claim obtained a positive opinion from an expert comity of the European Food Safety Authority (EFSA), based on the review of a scientific file submitted by one or several member states. In this paper we will mainly rely on the case of probiotics[3], which exemplifies best the issues of this Regulation.

The nutritional labels indicate under a specific format (a chart; a colours or letters ranking…) the nutritional content of a food product. As Laure Séguy (2010) demonstrates, the European history of these labels goes back to the harmonization of the European market in the 1970s but has really become a major stake for the European public authorities in the 2000s with the concern about obesity and the adoption of the 1924-2006 European Regulation. The 1169-2011 European Regulation mandates a nutritional chart on the back of every food box sold in Europe after the 13th of December 2016 while leaving open the possibility to specify some elements on the front of the box. But some Member States developed more "readable" label for consumer, such as the British "traffic light" system or the French "Nutriscore" label.

I. Labels and Standards as Governing Tools : a literature review

Many of today's public policies aimed directly or indirectly at regulating the behaviours of individuals and organizations provide for the implementation of a certain type of instrument that can be qualified as a label (Bergeron, Castel, Dubuisson-Quellier, 2014). Labels share some features with what the literature tends to identify as proper standards: they aim at defining the best practices and, more broadly, at regulating a sector or a social field (Brunsson and Jacobsson, 2000 ; Timmermans and Epstein, 2010); they are soft, non-binding instruments and rely on voluntary adherence from actors or organizations (Brunsson, 1999); they may represent – *at least* – a symbolic resource for those who adopt them (Segrestin, 1997 ; Ahrne, *et al.*, 2000). However, labels also have some peculiarities. One major peculiarity is that standardization aims at harmonizing and unifying a social field in a direct manner (Bowker and Leigh Star, 1999 ; Timmermans et Epstein, 2010), label as an instrument aims at playing on actors' willingness to distinguish themselves from other actors of the same competitive

[2] The analysis of the nutrition charters is based on the work of Henri Bergeron and Olivier Pilmis. See Pilmis and Bergeron (to be published).

[3] Probiotics were defined in 2001 as "a living micro-organism which, when introduced in sufficient quantity, produced beneficial health effects for the host." The principal components of probiotics used in the food industry are lactobacillus and Bifidobacterium, which were mainly used in dairy products such as Yakult®, Activia® or Actimel®.

field, in order to, indirectly, modify their behaviours in a definite – but *loose* – direction (Bergeron, Castel and Dubuisson-Quellier, 2014).

Obviously, actors using labels (in particular the State) are seeking for lever mechanisms that could come for the very competitive nature of the market (of many diverse kinds) from which stems the propensity of (in particular but not only economic) actors to look for differentiation and distinction. The specific characteristics of a mode of governance by labels are actually evidenced in their ability to play on the social dynamics peculiar to certain social environments, and especially on the actors' freedom and their wish to position themselves, by distinguishing themselves, in a particular competitive field, be it markets or worlds of reputation. The aim would be to orient them towards options that the public policy actors – especially the state – consider to be collectively beneficial. The literature has clearly shown the unanticipated effects of processes of standardization (Brunsson and Jacobsson, 2000; Brunsson, 1999 ; Timmermans and Epstein, 2010 ; Borraz, 2007). Among these unanticipated effects, it has been shown that, paradoxically, standardization can be at the origin of a diversification of the practices and organizations within a field, by local adaptation of standards during their implementation (Brunsson, 2000 ; Timmermans and Berg, 1997) and by the opportunities of strategic differentiation that they afford (Segrestin, 1997 ; Castel and Friedberg, 2010 ; Castel, 2009). In the case of labels, this mode of governance plays precisely (and deliberately) on this ambivalence (Bergeron, Castel, Dubuisson-Quellier, 2014). One expects that a standardization of practices will result from an individual wish to stand out in a competitive market, through the acquisition of labels. Based on Foucault (Foucault, 2004), we consider that the logics of distinction which regulate utilities and sanctions in a particular social field are instrumentalized by public policy as an incentive to the actors to deliberately take action whose value is endorsed by a label (Ibid.). Hence, the aim and outcome of this mode of governance are not the uniformity of a field but the ongoing creation of increasingly demanding labels that only some of the participants can hope to obtain. Whereas the cognitive model of standards is the (partial) organization (Ahrne and Brunsson, 2010), labels play more on (partial) market mechanisms.

Governance by labels is singular and interesting in so far as it enables public actors – especially the state – to identify a policy orientation, without it being necessary to give a precise content to the practices identified as virtuous. It can (at least initially) leave it up to the actors concerned to define them themselves or to propose some of them. We can posit that the domain of public health, characterized by a strong indeterminacy of knowledge and the difficulty of identifying best practice, are particularly well-suited to the implementation of this mode of governance. But this is also a field in which aggressive regulatory policies could prove to be particularly costly, at least in the short term, in terms of competitiveness and employment. Finally, the social dynamics that governance by labels is designed to activate resemble those of "security devices", in a Foucauldian sense: governance by labels acts on individuals' autonomy; what is interesting is that labels play on autonomy to produce heteronomy. That is why it does not seem to reflect a disengagement of the state in these areas, as much as an increasingly broad investment, especially in individuals' behaviours (Ibid.).

However, while the literature has increased our understanding of the mechanisms on which this form of government intends to operate, it has paid less attention to their practical

deployment and the difficulties that actors may encounter in doing so. This is what we are going to examine through the case of the three types of nutrition labels mentioned above.

II. Food Labels as Political Instruments

Public health experts, agencies, ministers, consumer associations, firms and their associations, all these different kinds of actors try to participate in and influence the design and authorization of food labels.

When one considers food labels, one is struck by how much actors engage symbolic as well as material resources to participate in their definition and implementation and how much their deployment is controversial (of course between different kinds of actors but also among scientists, among firms[4], among consumer associations[5] (see below)…). Laure Séguy describes the fierce debates that occurred inside the European parliament and around it, in the public space, during European consultation (2003-2006) on a possible regulation regarding nutritional labelling. For some months, in France, there has been a public controversy on a public experiment that aim at comparing four different nutritional labelling formats. Before the decision to launch this experimentation, the powerful food industry association (ANIA) had written to the Minister of Agriculture in order that he stopped the research of a public health physician. What bothered the ANIA was that this physician had tried to convince the Minister of social affairs to adopt a traffic-light format that was expected to run counter its interests. The launch of the experimentation can be analysed as a political compromise between the Ministry of health, the Ministry of agriculture, firms and public health experts (Laske, 2016). Just a last example: European firms lobby and react publicly after EFSA rejected most of their demands for health claims. We could continue to describe other controversies around such issues of food labelling. We will also describe later, through the case of French voluntary charters, that negotiations among actors could of course be less publicized but nonetheless hard.

The contentious character of food labels' deployment means that actors believe in their efficacy (although, as we will see, evidence about the effects labels is not robust (yet?)). But the contentious character is also consubstantial to this policy instrument, which is explicitly conceived as a political instrument. Contrary to other kinds of policy instruments, whose political nature is hidden and has to be revealed by social scientists (Lascoumes and Le Galès), (official) food labels are explicitly political: they have to articulate and integrate different (not immediately convergent) views and interests and pursue various goals: public health, information and protection of consumers, competition regulation and even, sometimes, innovation. The EC regulation on nutrition and health claims is clear about this:

[4] We will see that firms' interests are not immediately convergent. Some of them have/had a strategy towards « healthy » products and tend to welcome regulation that could separate the wheat from the chaff (in their favour)… More broadly, among firms, the balance is not obvious between the competitive imperative (and, thus, the opportunity to distinguish through labels) and the defence of a common interest in front of the State's leaning to regulate the sector. On the contrary, as Pilmis and Bergeron (forthcoming) have shown, the interests of the French association of food industry are much clearer: to keep its power, ANIA has to limit a too big fragmentation of its members around labelling issues and, thus, limit the competitive effects of food labels.

[5] See, for instance, Séguy, 2014.

> "General principles applicable to all claims made on foods should be established in order to ensure a high level of consumer *protection*, give the consumer the necessary *information* to make choices in full knowledge of the facts, as well as creating *equal conditions of competition* for the food industry" (our emphasis)

Later in the same document, it is added that the regulation has to help consumers in their « *healthy choices* » and « *healthy diet* » and that it "*should also allow for product innovation*". In the case of the French voluntary charters, nutritional improvements must "go in the sense of the PNNS (National Plan for Nutrition and Health), but with conditions of technological and economical feasibility" (Pilmis and Bergeron, 2016, p.10).

The formal organization of food labels' deployment symbolizes this, since working groups or committees in charge of it are often composed of different kinds of stakeholders. For instance, in the case of the voluntary charters, the committee in charge of the guidelines was headed by the President of the first chamber of the Court of auditors and was composed of high-status civil servants from the Ministries of health, of finance and economy and of agriculture. The committee in charge of the French experimentation on nutritional labelling (see above) has been headed by the General director of public health administration and has been composed of nutrition experts and firms' representatives. In the case of health claims, of course EFSA panels are composed of scientists only, but EFSA mandate is restricted to the expression of scientific opinion, a committee of the European commission then has to take decisions regarding health claims, wording, etc.

III. Promoting Public Health through Consumers Information?

Food labels aim at informing consumers. Behind this broad claim one may observe some ambiguities and ambivalences that actors must handle regarding its implementation: What does one want exactly to tell consumers through labels? What kinds of information? What does one expect that consumers are able to understand? How far do they understand? What is the most appropriate message? In this section, we will detail some ambiguities and ambivalences of consumers' government by labels.

3.1. A lack of evidence regarding labels' impact

Let's first notice a paradox. We have already written that actors (either from the public health sector or from the industry) invest substantial resources and energy in the management of labels. But at the same time, public and private actors as well as scientists generally recognize that evidence regarding the real effects of labels on consumers' behaviours is lacking. The following interview of a food industry's representative illustrates actors' puzzlement. After having described us how much its association and the food firms it represents try to convince Europe to reverse its decision to forbid the use of the term "probiotic" as a label, because they deem it crucial for the future of this sector, the representative, in the following excerpt, recognizes the uncertainty about labels' effect on consumers' behaviours.

> "Well, it is hardly hard enough to list all the words which imply an healthy effect in consumers' mind… and it varies from one culture to another… And, then, in the Regulation, there is the nutritional claim, which implies a healthy effect without any description of this effect… a nutritional or physiological effect, but without any accurate description… Then, there are

> health claims, which describe precisely a healthy effect (…). Well… so… Thus, the word "probiotic", of course, in peoples' mind… but still, many people don't even know what it means… I already conducted tiny surveys around me, and people don't know what it means." (Former representative of a yoghurt companies association ; Actual representative of a probiotic companies association ; our translation)

This uncertainty concerns the efficiency of label as a generic instrument as well as the most effective among the different existing label formats. While many surveys regarding consumers' attitudes or experiments are available in the literature, very few "real-world" studies have been conducted, which is a concern for public health scientists:

> "Consumers like the idea of simplified front of pack information but differ in their liking for the various formats. Differences can be related to conflicting preferences for ease of use, being fully informed and not being pressurised into behaving in a particular way. Most consumers understand the most common signposting formats in the sense that they themselves believe that they understand them and they can replay key information presented to them in an experimental situation. *There is, however, virtually no insight into how labelling information is, or will be, used in a real-world shopping situation, and how it will affect consumers' dietary patterns*. Results are largely in line with an earlier review by Cowburn and Stockley (Public Health Nutr 8:21–28, 2005), covering research up to 2002, but provide new insights into consumer liking and understanding of simplified front of pack signposting formats. There is an urgent need for more research studying consumer use of nutritional information on food labels in a real-world setting." (our emphasis) (Grunert et Wills, Journal of Public Health, 2007)

In this other excerpt from a recent report to the French Minister of health, its author, a public health physician who had presided the national plan against obesity since its beginning, underlines these uncertainties (but still argues in the end for the adoption of a label format, inspired by the British traffic light).

> "While no study has been able to assess the real impact of front-of-pack labelling, in real-world situation and on the long run, on nutritional status or health condition, or even on diet behaviours, there are many studies that contribute to stimulate consideration. Main available studies were conducted in virtual or controlled situations and used dummy packages rather than real products. Furthermore, they cannot allow an extrapolation if such measures would be applied on a global and massive scale and accompanied by a specific and extensive communication. In the best cases, studies deal with short term purchasing behaviour but do not assess the impact of the measure on the long run." (our translation) (Hercberg, 2013, p.44)

Assessment of food labelling is a hot topic of public health research. Studies and experiments are still under way. In France, a controversial experiment has been launched since September 26 2016 (Horel & Santi, 2016; Lake, 2016). It aims at comparing 4 label formats (see below).

This lack of evidence does not impede (fortunately!) actors to take decisions regarding the use and management of labels. But it obviously increases the difficulty to deliver the right message to the consumers.

3.2. A difficult translation : from what the science allows to say how it makes sense for the consumer

Broadly speaking, decisions regarding labels are difficult because they have to balance a scientific view on the quality of food products with an anticipation (expectation) of labels' effects on consumers' behaviours. This is well summarized in this excerpt of an interview

with a French public officer involved in the implementation of European regulation regarding health claims:

> "Our role is to take into account the scientific opinions, as well as what we think the average consumer is able to understand, as well as other regulatory relevant frameworks. Thus, we take into account all relevant factors and not only the scientific one, in order to take a decision." (Public officer, member of the French Direction for Competition and Consumption)

One may guess that this articulation work is difficult per se, but the fact that knowledge about consumers' behaviours regarding labels is still empirical (as we just saw) renders the work all the more difficult.

More specifically, a first difficulty is underlined by Laure Séguy in her PhD dissertation on nutritional labelling in Europe: nutritional labels aim both at helping consumers to choose between products in purchasing situations AND at helping them when preparing one's meal (with other products) and maintaining a balanced diet (Séguy, 2014, p.264).

This kind of concern is explicit in the EC Regulation on nutrition and health claims made on foods. A health claim may incite consumers to buy these "good" products (at the expense of others), but, if some of these products are then eaten too much, it may run counter to the overall goal of healthy diets. This is precisely why the regulation on health claims should go hand in hand with another regulation regarding nutritional profiles… But this regulation was very controversial and was blocked by the food industry.

> "Foods promoted with claims may be perceived by consumers as having a nutritional, physiological or other health advantage over similar or other products to which such nutrients and other substances are not added. This may encourage consumers to make choices which directly influence their total intake of individual nutrients or other substances in a way which would run counter to scientific advice." (Regulation (EC) No 1924/2006, on nutrition and health claims made on foods)

It is interesting to illustrate this kind of discussion by the case of salt that was discussed at the European level among experts in charge of the 2006 European regulation implementation. On one hand, experts agree with some beneficial effects of this nutrient, but on the other hand, they thought that, according to other considerations (such as the volume of salt that was already eaten in Europe and the guidelines to prevent chronic diseases linked with dietary habits), it should not be labeled. After a fierce debate, the restrictive stance overcame:

> "In France, we were against (a health claim for salt). (…) (In the regulation), it is written that claims should not contradict with public health messages. Because, if we tell consumers "stop eating too fat, too salty, too sugary" and, besides, they are told: "salt is very good for blood pressure"… well… I don't know… but what will they think?! (…) Then, typically, the argument that prevailed, was this one: "yes, indeed, salt contributes to this, that, and that function, but because of current consumption volumes and because of public health recommendations, it is more appropriate to refuse this claim" (…) and the balance has moved toward public health" (Public officer, member of the French Direction for Competition and Consumption)

On the other hand, regarding nutritional labelling through traffic lights formats, some actors – including some public health physicians and consumer associations – may fear that "negative" messages on some products will lead people to stop eating these products, some of which being nonetheless part of a global, balanced diet. Laure Séguy (2014) cited a report published by the (French) *National Center for Consumption* (CNC), during European

consultation on nutritional labelling; the working group, in charge of the report, was headed by Ambroise Martin, an authoritative nutritionist in France as well as in Europe[6], and was composed of experts, firms and consumer associations. Not only the representatives of the food industry, but also consumer associations were concerned that "consumers pay only attention to warnings" (our translation) (CNC 2006, annexe 6, in Séguy, 2014, p.256-257). The report, furthermore, stated that: "*A negative communication on a product implies distrust towards food products, generates a sense of fear towards them, while eating is vital, which can lead to deleterious behaviours.*" (Rapport étiquetage nutritionnel CNC janvier 2006, p.44, in Séguy, 2014, p.258)

There is another kind of controversial issue: some products contain some nutrients or other substances, which are needed for the functioning of the body; however, actors do not agree with the opportunity to grant them health claims, since very few people lack them and since it is debatable if this kind of deficiency may be solved by food ingestion. EFSA experts tended to adopt a restrictive stance on this kind of issue, which was criticized by food firms. Either they did not give a positive opinion or they add some restriction to the use of the claim, for specific population only, which makes it not interesting for firms, which prefer a general claim (for the whole population).

Finally, there is a tension between labels that must be easily and fast understood by consumers in purchasing situations and the precision that is needed to be in conformity with the scientific knowledge.

> "There are some claims, I'm not sure that consumers understand them… Even us, sometimes, we've got trouble to understand…" (Head of Probiotic Department in a Food Company and Representative in a Probiotic Companies Association)

Up to now, based on this kind of consideration, Europe has not authorized firms to write on their package "contains probiotics" or "antioxidants", since EFSA experts consider that is implicitly a (not documented enough) health claim, whereas it is possible to mention that a product contains other substances ("casei" for instance), which do not imply in their view an implicit health claim.

At a more general level, let's notice that this kind of debate runs across academics. We already mentioned that some nutritionists were cautious towards too synthetic "traffic light" formats. More generally, many different systems of nutritional labelling have been elaborated and compared by scientists, which illustrates the difficulty to find the right balance between precision and usefulness for action/decision. The same kind of debate has developed between behavioural economists and nudge promoters and other academics: the former are in favour of synthetic label to ease "good" decisions (too many information leading to confusion for consumers), while the latter think that full information is needed and that these labels can lead to a new disguised paternalism7.

[6] He had headed also the EFSA panel in charge of the implementation of the European regulation on health claims – whose opinions were considered as opposed to firms' interests.

[7] The Professor of Law, Ho, wrote a very interesting paper, in which he critically studied the diffusion of synthetic labels in the US to assess the food safety of restaurants. Not only did he show well that this kind of intervention can have non-intended effects, but he also questioned the "transparency" of these labels, since they are the results of long and complex processes mastered by experts only.

We will see in the next section that this kind of debate happened inside the committee in charge of the French voluntary charters. Some members did not want to synthesize too much – through a synthetic label – the opinion on firms' involvement towards a nutritional improvement of their products, because they thought that consumers could understand that their products were of a good nutritional quality.

> " We did not succeed in finding an agreement… always the same issue: the ambiguity, that one must not let spread, between nutritional quality and nutritional improvement." (Member of the French committee in charge of the voluntary charters)

IV. Promoting Public Health through Market Competition?

In their analysis of the label as tool of government, Bergeron, Castel and Dubuisson-Quellier (2014) insist on the role given by public actors to the competition process in the diffusion of the label and the improvement of environmental and health standards. As the label is a distinctive signal on the market, some firms may use them to set themselves apart from their competitors and to gain market shares or to set higher prices ; in return, their competitors may imitate these « innovators » and try to reduce the gap by getting the label for their own products. For their promoters, labels may thus create a virtuous circle continuously improving the general quality of the products. But, precisely because public and private actors believe in the efficacy of this competitive dynamic, they may try to undermine the competitive dimension of the label. The regulators may refuse to use the label as a way to regulate competition or may question the ability of the labels to mobilize the majority of private actors. And if some private actors are very eager to use the labels as a competitive advantage, many others may fear to enter into a run that can be very expensive and sacrifice the interest of most to the interest of some.

4.1. Setting the best apart? The ambiguities of distinction processes

The first dimension of the competition process created by labelling relates to distinction. Public and private actors are convinced that public labelling is a very effective way of setting the good companies and products apart from the bad ones.

> "For a while, we have welcomed warmly the regulation of health claims by the EFSA, because we were thinking that « it will clean up the market ». Many products have arrived for some years and it was a huge mess: they claimed anything and everything without restraint, without clinical study, even without approval of the strains characteristics. And we were considering that we were better placed than these companies. (…) We really thought this regulation will leave only the serious products on the market. But then…" (Head of Marketing Department; Probiotic Company)

Besides, the label is seen as a reward for the virtuous firms that have invested in R&D and assume higher costs, and that could use this distinctive signal as a competitive advantage on the market to gain market shares or set higher prices. The European health claim regulation was indeed clearly thought in this way, as its article 13.5 gives a 5 years period of exclusivity for the use of a claim to the company that have based this claim on « *newly developed scientific evidence and/or which include a request for the protection of proprietary data* ». Most

companies submitted files for specific claims instead of generic claims in order to get this exclusivity. But few succeeded…

> "At the beginning, everybody – small and large companies alike – has asked for very specific claims, thinking « I know that I do better ». Because, at this time, everybody was considering claims as a huge competitive stake. And the EFSA was supporting this process, as it was talking about proprietary data and exclusivity. They have put in place a system that suggested that the first arrived would be the first served. So the companies reacted in the same way." (Head of Probiotic Department in a Food Company and Representative in a Probiotic Companies Association)

> "There was a small company run by a scientist who has showed with a small but well thought set of clinical studies that tomato extract had an important impact on platelet aggregation. (…) There was nothing to say about the scientific demonstration and they got a positive opinion from the EFSA (…) And I heard that, 3 days after EFSA published its positive opinion, the stock price of this small company had increased tenfold and they have been bought by a big company in order to develop the product." (Former expert at the EFSA)

Many food companies showed the same interest for the nutritional charters at the beginning of the process, as it was presented by the government as a way to set themselves apart from their competitors. But in both cases, this distinction process was hindered by controversies within and between public and private actors.

For the public actors, this distinctive use of the label presents a major difficulty, as it means estimating and comparing the competitive advantage granted by the label with the public health improvement brought by the product or the company. In the case of nutritional charter, the public actors in charge of the regulation estimated that the public health improvements were too small or concerned too bad products to reward the companies with an explicit approval from the Health Ministry ; so they worded the authorized label in order to minimize its distinctive dimension :

> "We have had many difficulties explaining that we are not giving quality labels. These labels are not a signal for better products. They only mean that the company has decided to be committed to move towards the goals of the National Plan for Nutrition and Health (PNNS). This approach was not very well accepted by companies. And we were quite tough on the way companies may talk about the thing, in order to give non-misleading information to the consumers. I must admit that the final wording is not very 'commercial'. (…) For example, the companies would have settled for « Effort supported by the Ministry of Health » rather than « by the State ». But we refused it, because it was too 'commercial' for them (and…) we did not want to give the impression that their products were healthy." (Public Officer and Member of the Nutritional Charter Comity)

In the case of nutritional and health claims, the EFSA seems to have neutralized this distinctive effect of the label, by granting generic claims (concerning a whole category of food nutrient) without exclusivity, rather than specific claims (concerning a specific nutrient inside the category) with exclusivity, though most companies have asked for specific claims. It was a way for the EFSA to promote public health without involving in competition regulation.

> "While looking at the claims that got positive opinions by the EFSA, we are under the slight impression that they do not want to give competitive advantages. Eventually, they got stuck in their own trap. At the beginning, they said : « proprietary data, helping consumers, improving products » but they realized quickly that approving some products and not the others was

> giving an advantage on the market. (…) Eventually, the major stake in Europe is to protect the consumer and, to achieve this goal, they do not accept the specific claims of X, Y or Z but they accept generic claims concerning general food categories or active ingredients." (Head of Probiotic Department in a Food Company and Representative in a Probiotic Companies Association)

> "I would quite agree to let the companies use the word « probiotic » as a claim, while waiting for more specific claims. We [EFSA] will not use it of course but it would not bother me that they use it in a non-competitive way. At the beginning, I was against this use, because I thought a claim had to be discriminating. And that is what is reproached to our list : it is so short that it is not discriminating. And one consequence may be that either everyone uses it as a routine and there will be no discrimination, or no one will use it because it has no more interest. So I do not know..." (Former expert at the EFSA)

The reluctance to distinctive dimensions of the label did not only involve the public actors but also many companies and industrial associations. While some companies interpret the labels as a way to reward their strategy of developing healthy products, the others depict them as a way to stigmatize the vast majority of the products. Some industrial associations, such as the French Association of Food Companies (ANIA) have lobbied to deprive the labels of this distinctive dimension. In the case of nutritional charter, it has succeeded in obtaining that the charter does not compare among products or firms but estimate a transformation in the same product between period T1 and period T2. In the case of nutritional labels, they advocated for a nutritional chart (presenting the nutritional content of a product) and fought fiercely against rankings, such as « traffic lights », that would allow a comparison between products or categories of products. In the case of health claims, there was not such an opposition from industrial associations but there was no collective support either for the companies that wanted to submit claims to the EFSA:

> "The probiotics sector is very competitive. So a lot of yoghurt producers felt compelled to produce probiotic yoghurts with any imaginable labels. But they were just followers, they did not push to develop claims. And the slump in which we are stuck now suits them well, because they do not have to engage in an expansive and technologically advanced production that bother them" (Former member of a yoghurt companies association; actual member of a probiotic companies association).

This quote leads us to look into imitative dimensions of competitive processes. The goal of the promoters of public health labels is indeed not to set apart the best companies or products but to use them as a trigger to mobilize the mass of the companies and improve the general quality of food products. But is it simpler?

4.2. Stirring up the mass? The ambiguities of collective mobilization

Even if the labels are supposed to select and reward an elite with a distinctive signal, their real purpose is to trigger a collective dynamic that will spread, through imitative behaviours, from this elite to the majority of the targeted companies or products. But this virtuous circle leading to public health improvement is not easy to get.

The problem for regulator is to set the « right » level of expectations on the label, which means arbitrating between the degree of improvement in « health » quality of the products and the degree of diffusion of the label: either the requirements to get the label are too high and this

spill-over movement is rapidly stopped, leaving unchanged the mass of the products, either the requirements are too low and the label is discredited and there is little improvement in the health quality of the products. In the case of nutritional charter, the Ministry wanted to target companies « whose sales amount were above a certain threshold » and to include simultaneously some of the best and some of the worst companies in terms of nutrition.

> "That is the problem with the bad pupils. When they are really bad and they get a little less bad, we are not at ease with the process. We would prefer to get rid of them. But, as it is just an improvement, the product stays as it is, it is not really transformed." (Researcher in Nutrition; Member of the Scientific Comity for Nutritional Charter)

> "Some fast-food companies tried to get the label. And we realized that they have very little flexibility concerning the content of their products. So, they proposed to change very little things and we said: « It is not possible to give a label to some fast food if there is no real effort ». The credit of the Ministry began to be undermined." (Economist; former member of the Scientific Comity for Nutritional Charter).

Even if the nutritional labels target every product, the question of the mobilization of the majority was also raised by public and private actors. In this particular case, the debate was about the form of the comparison between products: should the nutritional profiles compare between products within a category (for example French fries which are more or less salty, fat…) or between categories of products (for example French fries vs cucumber salad), or between products without categories? As we have seen above, the food companies associations have clearly fought to minimize the comparison between products but also the « stigmatization » of some categories of products. These associations tried then to promote the system that will benefit to the majority of their members and particularly the ones whose products are the less able to meet these health standards.

In the case of nutritional and health claims, the problem is also quite different, as the purpose of the claim is precisely to distinguish the food products which have an added-value on health from the food products which have none. But, the question of the global category was also present with the generic claims. The probiotic companies and associations have progressively changed their strategy from a promotion of their specific strains that could benefit to some to a promotion of the general category of probiotics that could benefit to all.

> "We really think that we must find the lowest common denominator between all the actors and it goes through the characterization of common benefices to probiotics as a generic category: in general, the probiotic act on the microbiota.(…) And if the big players get the claim « probiotic », it will help the business models of everyone. Because everyone will have the right to use the word." (Head of Probiotic Department in a Food Company and Representative in a Probiotic Companies Association)

These debates have real consequences on the form and the diffusion of the labels within industrials. By acting on the requirements and the form of the labels, both public and private actors try to find the right balance between collective mobilization and individual distinction.

V. The Problematic Institutionalization of Labels in Public Health

5.1. When official labels fail to institutionalize

As we have seen above, these 3 labelling policies have given way to many debates within and between public and private actors and the results of these negotiations turned out to be unsatisfactory to all parties (mostly, Ministry of health and firms). We daresay that the institutionalization of these labels has partly failed for now, if we look at three criteria: the diffusion of the label; the use of the label; the form of the label.

In the case of voluntary charters, the public health authorities have had major difficulties to enrol many food companies. Only 30 charters were signed between 2008 and 2015 and the public health authorities refused to sign charters with some big food companies such as Lesieur (butter and vegetal oils) or Mac Donald. But even the companies or the associations which accepted to sign the charter, did not use the label granted by the State in their commercial relationships, because its wording was seen as “unreadable” by consumers, too long to stand on food boxes and of limited impact on their reputation. After some symbolic signature ceremonies, the Ministry of Health did not make many publicity about its label either and opposed the companies that wanted to use a simple but evocative image-based label (a light green logo for instance) because the signal sent to consumers would have been erroneous.

In the case of nutritional and health claims, the EFSA was particularly strict, as it gave positive opinions to only 18 % of the 2758 claims it had examined between 2009 and 2011 (and 0 % of the 39 claims concerning probiotic products). As one interviewee told us, the final list was considered as “very short” by the companies. But more than that, the probiotic companies, among others, reproached the EFSA to have failed in every goal she was aiming, because the absence of claim granted to probiotics deprive the consumers of an important information and leaves them alone to set the good products apart from the bad ones, it does not reward the companies that have invested in R&D and it does not improve public health.

In the case of nutritional labels, the European Regulation of 2011 will be enforced at the end of 2016. But the chart format finally adopted is judged by public health experts as incomprehensible for common consumers. As for the labelling system in France, the contestation by food companies associations was so intense that the Ministry of Health had to give up (at least momentarily) with the idea of implementing such a policy instrument and decided to launch an experimentation of different solutions, including the one proposed by food industries.

5.2. When official labels are misused, challenged or circumvented

Food industries developed three main strategies to overcome those institutionalization difficulties resulting in the creation ill-functioning labels or in the absence of label.

A first strategy was to play on other existing labels. In the case of probiotics, some firms used already institutionalized labels or branding to overcome the prohibition of probiotics-related health claims. Some firms for instance included vitamins in the composition of their probiotics products to benefit from its existing claim.

> "We have food supplements with probiotics but we do not have health claims on them. If we do not have anything to say about health, it does not interest the sellers. So, we play with the yellow line. We add vitamin A to the product and we get an health claim on it. But we can talk about the probiotic. So, yes, it is marketing and communication but everybody does that. (…) Everything is about the underlying message." (Director of regulatory affairs; Probiotic company)

In the case of charters, some food companies apposed the French equivalent logotype of the US "let's move" on their product or used colours associated with health (light green or light blue) on the packaging of their food products

A second strategy consists in creating private labels to challenge the official label. In the case of probiotics, the EU decision to prohibit any probiotics-related health claims and even any mention to probiotics in communications to consumers (motivated by the assumption that probiotics mention is in itself a health claim; this testifies that official and public recognition labelling is not necessary to the institutionalization of market devices and that new products and substances have also an autonomous social life) triggered the creation of a private label for probiotics. This label was created by scientists who wanted to distinguish between the "good" and the "bad" probiotic products :

> "I created this league and this label to answer the call of industrial and research communities. (…) To get our label, the product must pass quality tests realized by an independent laboratory that checks the characteristics, the amount and the survival rate of the probiotic strains contained in it. Initially, the Scientific Comity had also to check the scientific evidences concerning the strains before granting the label. But, with the new regulation, we can not do it because the label would be considered as a medical claim. (…) Actually, we maintained this scientific check as a pre-requirement to go into the labelling process, because we consider it as an essential component of the quality of the product. (…) The companies are authorized to put the label on the boxes of their products. But we have suppressed the word 'probiotic' in the wording of the label, because it is forbidden to use it with the consumers. (…) But we can use this word with the medical community. (…) This label is really seen by these actors as an added-value," (Researcher and Founder of a League granting quality labels for probiotic products)

A similar phenomenon occurred in the case of nutrient profiling (as in the case of sustainable consumer goods studied by Dubuisson-Quellier) when some food industries, reacting to public authorities' inability to edict any mutually agreed rules, opted for a private system. This results in a situation in which food choice regulation ends up in the hands of market actors, a situation where the quality and the objectivity of consumer's information on food products remains questionable. These private labels act as substitutes, when there is no official label, or as challenger, when the public label is considered by firms as too restrictive or harmful for industrial interests. The question is then to know if these private labels may be institutionalized without the support of the State.

The third strategy is to circumvent the label by using other communication channels. As the previous interview excerpt emphasized it, the prohibition of health claims by the European Regulation concerns only direct-to-consumer communication but not the communication to medical professions, which is considered as a business-to-business relationship. The companies selling nutritional supplement with probiotics are then intensively promoting their products to the doctors and the pharmacists, so they will prescribe or advise these products to

the consumers. Those strategies demonstrate, if need be, that policy labels are just one out of many other market devices that firms can use to seduce consumers. In that respect, one must insist on the ill-devised nature of label: they embody a fictional theory of consumer behaviour in which the citizen would be alone in front of product, in an one-to-one and atomized relation. Economic sociology has yet demonstrated, from the seminal work of Parsons to that of Hatchuel, that there exist many other prescription actors, like doctors, experts and nutritionists in case of food, and many different channels of information on the quality of goods.

All these strategies aim to answer to the failure of the state regulation but they also contribute to this failure by undermining the legitimacy of the official label.

Conclusion

The popularity of labels as soft tools of government is growing in many policy areas, and particularly in the area of public health. They have some of the features of a typical neoliberal instrument, aiming at changing behavior through individual empowerment and market-based mechanisms rather than through legal constraint or economic incentives. With its public welfare objectives, the label acts as a "regulator of interest", to borrow Foucault's term, capable of connecting private interest with collective goals, through a continuing process of improvement. Like nudges, labels are often promoted as more efficient, less costly, and more respectful of actors' freedoms than traditional tools such as binding rules or legal prohibition (Dubuisson-Quellier, 2016; Bergeron et al., 2018). But are they?

As we have attempted to highlight above, this tool of government appears to be rather difficult to govern (to design and master), as it is designed to satisfy a range of conflicting objectives and interests at the same time and has become a site of power struggles among public authorities and private actors. The efficacy of such a policy instrument, namely its ability to affect (economic) behavior, strongly relies on the proper definition of the content of the label. If government is too involved in this definition, the label might not have the power to shift business practices, as companies may have no interest in complying with it and may consider the commercial use of the label on their product as inappropriate or counterproductive. But if one or a few companies capture the definition process, the reason for the label having no effect on the market could be that other companies have no interest in engaging in a competition that is potentially both risky and costly. Finally in our three case-studies, governing the market through label implied governing the labels themselves, carefully selecting their grantee, promoting them to both consumers and companies, and struggling against other challenger labels or market intermediaries. It is not an uncommon paradox that these labels that are entrusted with such a high power of "changing the world", have been finally stripped of any power.

This article is a contribution to a broader collective research agenda on neo-liberal policy instruments (Dubuisson-Quellier, 2016; Bergeron et al., 2018). The promises of cost-efficient government of conducts carried by labels in the early 2000s now seem to be replaced by those of nudges. But while the limits and weaknesses of public labels are now clearly apparent, those of the nudges have not yet been properly assessed. Can these instruments survive and fulfil the objectives entrusted to them once released in a complex social and economic

environment? What social and technical organizations are most favorable or detrimental to their deployment and fulfilment? These are the questions that still need further research and will guide our future research agenda.

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