

INTERNATIONAL FOOD REGULATIONS AND THEIR UNINTENDED CONSEQUENCES: WHY THE EU'S FARM TO FORK STRATEGY WOULD HURT EUROPEANS

OLA LISOWSKI*

Introduction	206
I. Background: The Framework of Regulations	208
A. History and Transformation of European Institutions.....	208
B. Current State of Regulations	212
C. Recent Regulatory Proposals	214
II. Analysis: How Unintended Consequences of EU Regulations	
Harm Europeans	215
A. The Farm to Fork Strategy Would Increase Imports Produced Under Lower Standards, Undermining Its Goals.....	216
B. The Farm to Fork Strategy Would Disproportionately Impact Small Producers While Exacerbating Existing Issues	218
C. Front-of-Pack Nutrition Labeling Raises Costs, Negatively Impacts Accessibility While Failing to Achieve Its Goals	223
III. Areas for Reform.....	226
A. Models for Innovation: Embracing Technological Change.....	226
B. Models for Innovation: Using Existing Regulations and Simplifying Labeling to Empower Consumers	228
IV. Conclusion.....	231

* Ola Lisowski is a Senior Managing Editor of the *Wisconsin International Law Journal* and a 2022 J.D. Candidate at the University of Wisconsin Law School. She would like to sincerely thank her fellow editors and staff for their work, Kevin J. Fandl for inspiring the topic of this Comment, and Andrew Hinkens for his endless thoughtfulness and care. Finally, for Mama and Tata: everything is for you. Serdecznie dziękuję za wszystko.

INTRODUCTION

From specifications on the curvature of cucumbers and bananas,¹ to more than two thousand official guidances on wine,² food and wine regulations across Europe have long attracted the ire and mockery of Eurosceptics. But how many of these regulations actually caused producers to meaningfully adjust behaviors—and how many simply shifted costs to consumers to avoid penalty? This Comment will address food regulations in Europe and consider the ways in which such regulations hamper innovation and progress. It will seek to answer how regulations might spur or hinder innovation and lead producers toward making certain types of products, and will argue in favor of producer ability to innovate freely in response to customer demand.

Since the inception of its predecessor, the European Coal and Steel Community, the European Union (EU) has become increasingly integrated.³ For a project that began with the goal of avoiding another devastating land war,⁴ the EU and its myriad of institutions including the Court of Justice of the EU, the European Council, the European Commission, and the European Parliament now impact millions of households within and outside of its borders. From its unified currency, to the freedom of European citizens to travel freely between twenty-seven member states (plus several others), these institutions can carry a large impact on the citizenry.⁵ Europe's single market—and the regulations that go alongside it—has played a significant role in changing consumer and producer behavior.⁶ Still, while goals of improving public health posit admirable goals, unintended consequences⁷ of strict regulatory environments must not be overlooked. That regulations change producer behaviors is no new idea; indeed, regulators themselves have openly hoped

¹ Stephen Castle, *EU Relents and Lets a Banana Be a Banana*, N.Y. TIMES (Nov. 12, 2008), <https://www.nytimes.com/2008/11/12/world/europe/12iht-food.4.17771299.html> [<https://perma.cc/UU43-XUFC>].

² Giulia Meloni & Johan Swinnen, *The Political Economy of European Wine Regulations*, 8 J. WINE ECON. 244, 245 (2013).

³ ROBERT SCHUTZE, AN INTRODUCTION TO EUROPEAN LAW 1 (CAMBRIDGE UNIV. PRESS, 2D ED. 2015).

⁴ Franz C. Mayer & Simon P. Thies, *European Union, Historical Evolution*, in MAX PLANCK ENCYCLOPEDIA OF INTERNATIONAL LAW, para. 1 (Oxford Pub. Int'l Law, 2019).

⁵ *Id.* paras. 12–13.

⁶ See SCHUTZE, *supra* note 3, at 5.

⁷ See generally Samuel R. Wiseman, *Liberty of Palate*, 65 ME. L. REV. 737 (2013) (discussing the potentiality of a right to be free of mandates to consume any particular type of food).

for such results.⁸ Agriculture, including food grown for human consumption, is regulated by a Common Agriculture Policy, though states can and do impose more strict regulations.⁹

While well-intentioned, food and wine regulatory policies have led to significant unintended consequences across the European continent and the world. For example, the EU's Common Fisheries Policy, meant to protect against overfishing, has resulted in fishermen dumping billions of dead fish into the ocean, despite attempts at reforming the policy.¹⁰ Wine production worldwide has been significantly influenced and at times even driven by the regulatory states in respective countries.¹¹ Among many other rules on production, France did not allow irrigation of vineyards until 2007, while United States and Chile imposed no such regulations.¹² Markets grown in each sector have responded accordingly, as New World producers "armed with more flexibility in their regulatory environments"¹³ have begun to dominate the global wine market.

This Comment will explore the interesting and, at times, unexpected impacts of regulatory environments. In Part I, this Comment will examine the history of European law and explain how its transformation has led to today's regulatory state. It will also introduce the Farm to Fork strategy, a recent sweeping European proposal. Part II will discuss numerous unintended consequences of such regulations, including price increases, producer nudging, and changes to accessibility in the context of the Farm to Fork strategy. Finally, Part III will argue for the freedom of producers to innovate and respond to customer demand.

⁸ Kathryn Bowen, *The Poultry Products Inspection Act and California's Foie Gras Ban: An Analysis of the Canards Decision and Its Implications for California's Animal Agriculture Industry*, 104 CAL. L. REV. 1009, 1014 (2016).

⁹ Consolidated Version of the Treaty on the Functioning of the European Union art. 38, June 7, 2016, 2016 O.J. (C 202) 1 [hereinafter TFEU].

¹⁰ Rod Minchin, *Fish being dumped at sea despite EU rules*, ECOLOGIST (Sept. 2, 2019), <https://theecologist.org/2019/sep/02/fish-being-dumped-sea-despite-eu-rules> [<https://perma.cc/5P8S-RM4M>].

¹¹ Kevin J. Fandl, *Regulatory Policy and Innovation in the Wine Industry: A Comparative Analysis of Old and New World Wine Regulations*, 34 AM. UNIV. INT'L L. REV. 279, 350 (2018).

¹² *Id.* at 344–45.

¹³ *Id.* at 284.

I. BACKGROUND: THE FRAMEWORK OF REGULATIONS

EU law has expanded in scope and breadth in unimaginable ways from its early days into the law existing today. First, this part will explore the history of European institutions and the ways in which they have evolved through decades of treaties and expansion. Next, it will discuss the current standing treaties and the platform they set for new proposals. Finally, it will introduce a recent EU proposal—the Farm to Fork program.

A. HISTORY AND TRANSFORMATION OF EUROPEAN INSTITUTIONS

The EU's predecessor began as an innovative idea born of desperation.¹⁴ Off the backs of yet another devastating world war, French Foreign Minister Robert Schuman's now-infamous 1950 Schuman Declaration sought to protect Europeans with a cunningly simple premise: hand over power of French and German coal and steel resources to a third-party, supranational entity, and make another war impossible.¹⁵ With the ingredients for weapons of war safely out of reach, the continent could continue its relative peace into the future, if a bit more at ease. In 1952 the European Coal and Steel Community (ECSC) was born, and shortly after the ink dried plans for greater integration arose.¹⁶ Jean Monnet, the head of the French General Planning Commission, proposed the establishment of a single European army, organized under a political union.¹⁷ Although the earliest attempt to create a European army failed,¹⁸ the idea perennially returns, showing a continual desire—at least by some—to continue the extent and depth of European integration.¹⁹

The years following the ECSC's creation were characterized by a flurry of proposals, negotiations, and ultimately treaties in favor of different forms of European integration, all leading toward the creation of a single European market.²⁰ The 1957 signing of the Rome Treaties established the European Economic Community and the European Atomic

¹⁴ See Mayer & Thies, *supra* note 4.

¹⁵ *Id.* para. 2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Azeem Ibrahim, *Europe Is Ready for Its Own Army*, FOREIGN POL'Y (Sept. 5, 2019), <https://foreignpolicy.com/2019/09/05/europe-is-ready-for-its-own-army/> [<https://perma.cc/W7PJ-3A38>].

²⁰ Mayer & Thies, *supra* note 4, para. 2.

Energy Community.²¹ These dual European Communities remained the basis of the European integration until the early 1980s, when member state participation finally went beyond mere voluntary association and transformed into a relationship with legally binding effects.²² The Single European Act (SEA), which was adopted in 1986 and entered into force in 1987, was a critical revision to the project's structure.²³ The SEA crystalized a crucial goal for European integration: the completion of a barrier-free internal market by 1992.²⁴ With the SEA in place, a series of economic changes transformed the European landscape.²⁵ The Act's deregulation and harmonization platforms ushered in legal changes across all of its member states.²⁶ States began pursuing positive and negative integration in earnest during this era. First, member states pursued negative integration by identifying and eliminating barriers to trade.²⁷ Next, states implemented positive integration by taking proactive measures to harmonize diverse national laws.²⁸ Positive and negative integration measures continue to this day and provide the basis of the single internal market.²⁹

While European states were incredibly active in implementing integrating measures during this era, the European project itself was still organized under the dual European Communities, a structure which was no longer sufficient for its lofty goals.³⁰ Following calls for a closer monetary and economic union, member states finally agreed to move beyond their predecessors and create a true political union.³¹ In 1992, heads of state and government signed the Treaty of Maastricht, establishing the European Union.³² The EU was reorganized as a three-pillar structure, with the Communities collapsed into the first pillar.³³ New

²¹ *Id.*

²² *Id.* paras. 6–7.

²³ *Id.* para. 8.

²⁴ *Id.*

²⁵ *Id.* para. 9.

²⁶ *Id.*

²⁷ SCHUTZE, *supra* note 3, at 219.

²⁸ *Id.*

²⁹ *Id.* at 222.

³⁰ *Id.* at 3.

³¹ *Id.*

³² *Id.* at 2.

³³ The three pillars consisted of the European Communities, Common Foreign and Security Policy, and Cooperation and Justice and Home Affairs. *Id.* at 1–2.

competencies were added to its purview, including foreign security policy, and justice and home affairs.³⁴

The Treaty of Maastricht had one particularly crucial and relevant development: the principle of subsidiarity became formalized as a constitutional principle.³⁵ Subsidiarity is the notion that a central authority performs only the tasks which cannot be produced at a more local level.³⁶ In the context of the EU, the principle means that the Union acts “only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States.”³⁷ Thus, in areas outside of the Union’s exclusive competencies, member states retain—or ought to retain—oversight.³⁸

Although the SEA and the Maastricht Treaty ushered in greater economic integration between member states, a completely barrier-free internal market had not yet been achieved.³⁹ Indeed, during the Maastricht negotiations, members agreed to table certain issues, such as further harmonization steps, to future negotiations.⁴⁰ Those reforms took place first at the Treaty of Amsterdam, signed in 1997, and later at 2001’s Treaty of Nice.⁴¹ This era of dissatisfaction and endless negotiations culminated in the 2005 failure of the Constitutional Treaty.⁴² This “European Constitution” would have created a single document to replace the existing law.⁴³ After a “phase of reflection,” integrators went back to the drawing board and created a new treaty which contained most of the rejected Constitution’s substantive provisions, without any references to a constitution, flag, or anthem.⁴⁴ The Lisbon Treaty came into force in 2009, and with it the three-pillar system was collapsed into the single Union we know today.⁴⁵ With the Lisbon Treaty, the EU’s twin governing treaties came into force.⁴⁶ Previously one single document, the treaties were split

³⁴ *Id.*

³⁵ Mayer & Thies, *supra* note 4, para. 14.

³⁶ SCHUTZE, *supra* note 3, at 47.

³⁷ Consolidated Version of the Treaty on European Union art. 5(3), Oct. 26, 2012, 2012 O.J. (C 326) 13 [hereinafter TEU].

³⁸ Mayer & Thies, *supra* note 4, para. 33.

³⁹ *Id.* paras. 8–10, 16.

⁴⁰ *Id.* para. 15.

⁴¹ *Id.* paras. 17–18.

⁴² *Id.* para. 22.

⁴³ *Id.* para. 21.

⁴⁴ *Id.* paras. 22, 25.

⁴⁵ *Id.* paras. 23–25.

⁴⁶ *Id.*

into two governing bodies of law: the Treaty on the Functioning of the European Union (TFEU) and the Treaty on European Union (TEU).⁴⁷ While the TEU contains general principles and provisions about the Union, the TFEU provides greater detail in its text.⁴⁸ These twin treaties will be discussed in further detail in Part I.B.

Today, the European legal order features both direct effect and direct applicability of its laws.⁴⁹ The doctrine of direct effect means that individual rights and obligations directly rise from EU law, independent of member states' legislation.⁵⁰ Direct applicability, on the other hand, refers to whether EU law automatically becomes part of an individual member state's laws without any further lawmaking at the national level.⁵¹ As with the EU's institutions themselves, this legal order did not occur overnight, nor was it present at the founding of the ECSC.⁵² The groundbreaking *Van Gend en Loos* case confirmed the independent European legal order, wherein EU agreements create mutual obligations enforceable upon private individuals.⁵³ Under *Van Gend*'s precedence, to have direct effect, a European provision must satisfy three strict criteria: (1) the provision must be clear; (2) it must be unconditional; and (3) it must be absolute, without any reservations.⁵⁴ However, the court has long grappled with these boundaries, and much like the rest of the path of European integration, early limits on the EU's power have long since expanded.⁵⁵ The court has significantly widened the concept of direct effect. In *Defrenne*, the court confirmed that private—as well as public—actions are covered by EU law.⁵⁶ There, the court held that a private employer could not discriminate in pay rates between men and women.⁵⁷ Today, even unwritten and vague general principles of EU law can have direct effect, showing that *Van Gend*'s strict tests have long since been

⁴⁷ *Id.*

⁴⁸ SCHUTZE, *supra* note 3, at 41.

⁴⁹ *Id.* at 120.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Case 26/62, *Van Gend en Loos v. Neth. Inland Revenue Admin.*, 1963 E.C.R. 1; *see also* SCHUTZE, *supra* note 3, at 120.

⁵⁴ SCHUTZE, *supra* note 3, at 120.

⁵⁵ *Id.*

⁵⁶ Case 43/75, *Defrenne v. Sabena*, 1976 E.C.R. 455, 476; *see also* SCHUTZE, *supra* note 3, at 123.

⁵⁷ *Defrenne*, 1976 E.C.R. at 476.

washed away for more expansive views of legal power.⁵⁸ Under direct effect, the two Treaties act as constitutions binding upon all member states.⁵⁹

B. CURRENT STATE OF REGULATIONS

Today, the EU's twin treaties provide the basis of European law. As noted above, the Union has implemented both negative and positive integration in creating a single internal market.⁶⁰ Negative integration is achieved by the elimination of all barriers to intra-Union trade and is required under the TFEU.⁶¹ Positive integration, on the other hand, works through the harmonization of national laws, and is governed by competences such as Article 114, which gives the EU the power to adopt measures which "have as their object the establishment and functioning of the internal market."⁶²

Article 34 of the TFEU provides the legal basis for the EU's prohibition on quantitative restrictions of imports.⁶³ Quantitative restrictions are obstacles to trade which cannot be overcome by the payment of money, unlike tariffs.⁶⁴ However, Article 34 does not just ban quantitative restrictions; it also bans any "measures having equivalent effect" (MEQRs).⁶⁵ Here, the EU goes beyond restrictions in name only, and places a focus on myriad restrictions which result in the same effect, showing the Court's desire to focus on not just form, but on meaningful effect. Directive 70/50 provides a legislative definition of MEQRs, and defines two types.⁶⁶ First, MEQRs are national measures which are not equally applicable to domestic and foreign products, and thus hinder imports that could otherwise occur.⁶⁷ Second, MEQRs are measures which are equally applicable to domestic and foreign products, but which have a restrictive effect on the free movement of goods exceeding effects intrinsic

⁵⁸ See Case C-144/04, *Mangold v. Helm*, 2005 E.C.R. I-10013, ¶¶ 75, 78; see also SCHUTZE, *supra* note 3, at 122.

⁵⁹ SCHUTZE, *supra* note 3, at 137.

⁶⁰ *Id.* at 120.

⁶¹ *Id.* at 221.

⁶² TFEU art. 114; see also SCHUTZE, *supra* note 3, at 222.

⁶³ SCHUTZE, *supra* note 3, at 123.

⁶⁴ *Id.*

⁶⁵ TFEU art. 34.

⁶⁶ SCHUTZE, *supra* note 3, at 123.

⁶⁷ *Id.*

to trade rules.⁶⁸ Thus, while national policies that treat foreign and domestic goods differently are clearly impermissible, measures which are equally applicable to both foreign and domestic goods rise to a different level of scrutiny, and many have a restrictive effect “over and above” trade rules.⁶⁹

A long line of cases examined these questions and considered whether certain national policies rise to the level of forbidden MEQRs. One notable case established the *Dassonville* formula, which provides that “all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-[Union] trade are to be considered as measures having an effect equivalent to quantitative restrictions.”⁷⁰ In the *Dassonville* case, the court considered whether Belgian rules which required Scotch whiskey to have a certificate of origin label constituted a MEQR.⁷¹ In establishing the *Dassonville* formula, the court said that the Belgian national rule was a MEQR, and could not stand under Art. 34. The court then expanded upon this rule in *Cassis de Dijon*, which concerned a German marketing rule that set a minimum alcohol level of liqueurs at 25 percent.⁷² The rule effectively banned the sale of a French liqueur called Cassis de Dijon in Germany, since the liqueur only had 20 percent alcohol.⁷³ In considering whether the rule was an unreasonable restriction on intra-Union trade, the court wrote that the German rule was impermissible.⁷⁴ Further, the court implicitly overruled any presumption that trade restrictions on equally applicable product requirements would only be barred if they had exceptional impact.⁷⁵

The *Sunday Trading* cases marked another instance of the court interpreting the TFEU broadly.⁷⁶ There, the Torfaen Borough Council accused British retail company B&Q of violating the British Shops Act by

⁶⁸ *Id.*

⁶⁹ Commission Directive 70/50/EEC, 1970 O.J. (L 13) 17, 17 (EC).

⁷⁰ Case 8/74, *Procureur du Roi v. Dassonville*, 1974 E.C.R. 837, 852; *see also* SCHUTZE, *supra* note 3, at 235.

⁷¹ *Procureur du Roi*, 1974 E.C.R. at 839–40.

⁷² Case 120/78, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein*, 1979 E.C.R. 649, 660; *see also* SCHUTZE, *supra* note 3, at 235.

⁷³ *Rewe-Zentral AG*, 1979 E.C.R. at 651; *see also* SCHUTZE, *supra* note 3, at 235.

⁷⁴ *Rewe-Zentral AG*, 1979 E.C.R. at 665; *see also* SCHUTZE, *supra* note 3, at 235.

⁷⁵ SCHUTZE, *supra* note 3, at 236.

⁷⁶ *Id.*

selling goods on Sundays.⁷⁷ In response, B&Q claimed the Shops Act was an impermissible MEQR, since it reduced the total amount of sales in Britain, and some percentage of those sales were of foreign goods, thus constituting a restriction on imports. The court held that the Shops Act would be a MEQR if the effects of such national rules exceed what is necessary to achieve the aim in view.⁷⁸ Implicitly, the case stood for the notion that commercial traders could simply challenge national laws that restricted marketing under the *Dassonville* formula.⁷⁹ Noting that it had perhaps gone too far in its interpretation, the court pulled back on its expansive vision in *Keck*, where it considered the case of a supermarket which sold goods at a loss, a form of sales promotion forbidden under French law.⁸⁰ *Keck*, the supermarket's manager, argued the French law was a MEQR because it restricted intra-Union trade in goods.⁸¹ The court declined this interpretation.⁸² While reaffirming the *Dassonville* formula, the court distinguished between product requirements and selling arrangements, holding that selling arrangements were only MEQRs if they discriminate against the marketing of foreign goods.⁸³ Product requirements, however, do not need to be discriminatory to fall within Article 34's oversight.⁸⁴ Today, the distinction between product requirements and selling arrangements signifies a crucial demarcation.⁸⁵ Thus, even as the court has struggled to find the exact line on permissible and forbidden quantitative restrictions, its consideration of such factors shows a continued focus on effect rather than simple form.

C. RECENT REGULATORY PROPOSALS

Clearly, the EU's integration has expanded considerably since the days of the Schuman Declaration, and recent activities show the track will not shift any time soon. In late 2019, the European Commission launched a "European Green Deal" strategy which seeks to make Europe the first

⁷⁷ Case 145/88, *Torfaen Borough Council v. B&Q*, 1989 E.C.R. 3851, 3852; *see also* SCHUTZE, *supra* note 3, at 236.

⁷⁸ *Torfaen Borough Council*, 1989 E.C.R. at 3853; *see also* SCHUTZE, *supra* note 3, at 237.

⁷⁹ SCHUTZE, *supra* note 3, at 237.

⁸⁰ *See* Joined Cases C-267 & C-268/91, *Crim. Proc. Against Keck & Mithouard*, 1993 E.C.R. I-6099; *see also* SCHUTZE, *supra* note 3, at 237.

⁸¹ *Keck & Mithouard*, 1993 E.C.R. at I-6102; *see also* SCHUTZE, *supra* note 3, at 237.

⁸² *Keck & Mithouard*, 1993 E.C.R. at I-6106; *see also* SCHUTZE, *supra* note 3, at 237.

⁸³ *Keck & Mithouard*, 1993 E.C.R. at I-6103; *see also* SCHUTZE, *supra* note 3, at 238.

⁸⁴ SCHUTZE, *supra* note 3, at 238.

⁸⁵ *Id.*

climate-neutral continent.⁸⁶ Included in the plan is a “Farm to Fork” plan which aims to increase access to healthy, affordable, and sustainable food while also addressing climate change and improving food systems and biodiversity.⁸⁷ Among the Farm to Fork provisions is a proposal to harmonize mandatory front-of-pack nutrition labels by the last quarter of 2022.⁸⁸ While the ambitious plan seeks to assist European consumers in making healthy choices, its impact on food markets across the continent must not be overlooked. European farmers, for example, have already warned the Union of the negative consequences such labeling plans would have on producers and consumers alike.⁸⁹ For example, countries could end up importing food from outside the Union to obtain better prices, but such products would not meet European standards.⁹⁰ Further, small producers in particular would be disproportionately harmed.⁹¹ Notably, massive companies such as Danone⁹² and Nestlé have supported mandatory uniform nutritional labeling,⁹³ perhaps because such producers are more likely to afford such changes compared to local farmers.

II. ANALYSIS: HOW UNINTENDED CONSEQUENCES OF EU REGULATIONS HARM EUROPEANS

The EU’s Farm to Fork strategy posits lofty and admirable goals; unfortunately, the plan itself would cause more of the problems it would seek to fix. The strategy features four pillars: sustainable food production, sustainable food processing and distribution, sustainable food consumption, and food loss and waste prevention.⁹⁴ To achieve these

⁸⁶ *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee, and the Committee of the Regions, The European Green Deal*, at 2, COM (2019) 640 final (Nov. 12, 2019) [hereinafter *The European Green Deal*].

⁸⁷ *Id.* at 11–12.

⁸⁸ Oliver Morrison, *What Does the Farm-to-Fork Strategy Mean for the Future of Food in Europe?*, FOOD NAVIGATOR (May 22, 2020, 9:38 AM), <https://www.foodnavigator.com/Article/2020/05/22/What-does-the-farm-to-fork-strategy-mean-for-the-future-of-food-in-Europe#> [https://perma.cc/CS82-BSR2].

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *See id.*

⁹² Americans know this company as “Dannon,” which is the name of the U.S. subsidiary of the French-owned “Danone.”

⁹³ Morrison, *supra* note 88.

⁹⁴ *Farm to Fork Strategy – for a Fair, Healthy and Environmentally-Friendly Food System*, EUR. COMM’N, https://ec.europa.eu/food/farm2fork_en [https://perma.cc/SF3K-WZ8F].

goals, the strategy sets targets to reach by 2030, including the reduction of chemical and hazardous pesticides by 50 percent, the reduction of fertilizer use by 20 percent, the reduction of nutrient losses by 50 percent, a quota of 25 percent of farmland dedicated to organic farming, and a reduction of sales of antimicrobials for farmed animals and in aquaculture by 50 percent.⁹⁵ The plan would achieve these goals through a series of both regulatory and non-regulatory changes, such as required front-of-pack labeling and increased investments in research.⁹⁶ However, numerous proposals featured in the plan would undermine the very goals they seek to reach. First, standardized pack labeling for all products would not only increase prices, thus worsening consumer access, but would also disproportionately impact small producers.⁹⁷ In turn, European supply chains would break down, becoming more dependent upon imports from outside of the EU and thus reducing sustainability. If fully implemented, the Farm to Fork strategy would result in more expensive products, made by fewer suppliers, located further away. This would be a near-opposite outcome of the purported goals of the Farm to Fork strategy. This section will examine each of these unintended consequences in turn to demonstrate that, although laudable, the implementation of the EU's Farm to Fork strategy would hurt the very consumers and producers the project seeks to help.

A. THE FARM TO FORK STRATEGY WOULD INCREASE IMPORTS
PRODUCED UNDER LOWER STANDARDS, UNDERMINING ITS
GOALS

Although the Farm to Fork strategy will impose significant costs on producers, the European Commission has sought to market the plan as friendly toward farmers across the continent.⁹⁸ Regulatory and non-regulatory changes to business models and production requirements will “link production methods to premium consumer demand, leading to higher returns for farmers and food producers,” according to the Commission.⁹⁹ In this manner, the Commission argues that consumer demands will shift in response to better access to healthier foods, and the creation of new

⁹⁵ EUR. COMM'N, FROM FARM TO FORK: OUR FOOD, OUR HEALTH, OUR PLANET, OUR FUTURE (May 2020).

⁹⁶ *The European Green Deal*, *supra* note 86.

⁹⁷ See Morrison, *supra* note 88.

⁹⁸ EUR. COMM'N, EU GREEN DEAL: BENEFITS FOR FARMERS (May 2020).

⁹⁹ *Id.*

business opportunities.¹⁰⁰ Perhaps most surprisingly, the Commission has even claimed that the plan would lower costs to farmers, because of advances in innovation and technology enabling higher productivity and reduced inputs.¹⁰¹

However, agricultural lobbying groups have pushed back against the plan.¹⁰² Citing fears that the plan simply imposes costs on farmers, Joachim Rukwied, president of the agricultural group COPA-COGECA,¹⁰³ said that the Farm to Fork strategy would result in more European food production being outsourced and European agriculture holdings being abandoned.¹⁰⁴ French farm lobby French Federation of Farming Workers' Unions agreed, writing that "while the environmental impact of [Farm to Fork] is uncertain, what is certain is that it will lead to an increase in food imports for Europeans."¹⁰⁵ These groups have lobbied heavily against many provisions of the plan.

Anxiety over the plan is centered around a few issues. First, organic farming produces on average 16 percent lower yields than traditional farming.¹⁰⁶ Without price increases to the final goods, farmers would face revenue shortfalls compared to current land use.¹⁰⁷ Next, the plan's short timeframe would place significant pressure on farmers to act quickly, since the entire strategy aims to achieve its goal by 2030.¹⁰⁸ Working in tandem, these pressures raise concerns that many farmers could go out of business without additional funding to help deal with the cost of regulatory compliance.¹⁰⁹ Noting that "the costs of adhering to safety restrictions are already several times higher than in third¹¹⁰

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Emma Penrod, *EU's Farm to Fork Goals Draw Concern from Ag Industry*, FEED STRATEGY (May 22, 2020), <https://www.feedstrategy.com/sustainable-agriculture/eus-farm-to-fork-goals-draw-concern-from-ag-industry/> [<https://perma.cc/LY4Y-GGBA>].

¹⁰³ "COPA" is the Committee of Professional Agricultural Organisations, and "COGECA" is the General Confederation of Agricultural Cooperatives.

¹⁰⁴ Penrod, *supra* note 102.

¹⁰⁵ Louise Kelleher, *Farm 2 Fork | EU Has Caved to Eco-Lobby, Complains Big Ag*, ARC 2020 (May 25, 2020), <https://www.arc2020.eu/farm-2-fork-eu-has-caved-to-eco-lobby-complains-big-ag/> [<https://perma.cc/DX6B-QZP5>].

¹⁰⁶ *Europe's Farm to Fork Strategy Must be Nuanced to Protect EU Farmers*, EUR. SCIENTIST (Aug. 13, 2020), <https://www.europeanscientist.com/en/agriculture/europes-farm-to-fork-strategy-must-be-nuanced-to-protect-eu-farmers/> [<https://perma.cc/XYZ9-7U2Y>].

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ "Third countries" are those outside the EU.

countries,” a spokesman for the Czech Republic’s Agricultural Association asserted that the plan would exacerbate the problem.¹¹¹

Although lobbyist assertions should be taken with a grain of salt, they are not alone in their analysis. Academics have also raised concerns over the potential for the strategy to “accelerate the disappearance” of small-scale farmers, further concentrating farms because of the increased costs of compliance.¹¹² Further, the farm lobby heads hit on an important point; if more European farmers are driven out of business because of the high costs of compliance, the EU would become more dependent on imports.¹¹³ These imports, of course, would come from countries with lower regulatory standards.¹¹⁴ As a result, the European food supply would travel from further away, thereby increasing demand for food produced at lower standards.¹¹⁵ As Tim Cullinan, president of the Irish Farmers’ Association, aptly said, “the EU wants ever-increasing standards imposed on European farmers, but will do trade deals to import food from other countries which have much lower standards and do not meet EU rules.”¹¹⁶ Therein lies the paradox of the Farm to Fork strategy: while laudable, many of its goals are likely to exacerbate the very problems they seek to fix. These unintended consequences should be carefully considered before such policies are implemented.

B. THE FARM TO FORK STRATEGY WOULD DISPROPORTIONATELY IMPACT SMALL PRODUCERS WHILE EXACERBATING EXISTING ISSUES

Although Farm to Fork mandates would impose new requirements on all producers, negative impacts would disproportionately harm small, family-owned businesses.¹¹⁷ Thin margins in the agricultural industry underlie many of the concerns farming associations have raised in reaction to the Farm to Fork strategy. The COVID-19 pandemic only heightened

¹¹¹ *Europe’s Farm to Fork Strategy Must be Nuanced to Protect EU Farmers*, *supra* note 106.

¹¹² *Scholars Respond to New EU Farm to Fork Strategy*, CULTIVATE COLLECTIVE (June 5, 2020), <https://www.cultivatecollective.org/in-perspective/scholars-respond-to-new-eu-farm-to-fork-strategy/> [https://perma.cc/73ET-EMU3].

¹¹³ *See Morrison*, *supra* note 88.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Scholars Respond to New EU Farm to Fork Strategy*, *supra* note 112.

such concerns.¹¹⁸ Lockdown measures such as border closures resulted in worker shortages, significantly disrupted agricultural supply chains, and substantial income losses for farmers.¹¹⁹ In the context of mandatory front-of-package nutritional labeling,¹²⁰ one clear trend shows just how disproportionate the potential impact would be. While smaller producers have expressed serious concern over the burden new mandates would impose,¹²¹ multinational conglomerates such as Nestlé and Danone have embraced the proposals, calling for the Commission to enforce standardized labeling Union-wide.¹²² Such clear disparities in producer responses demonstrate how certain sectors will be able to respond to the mandates, while others could be left behind.

Big producers are much less likely to have issues with implementing uniform front-of-pack labeling. This is evidenced in their public support for the mandatory adoption of such labels across the EU.¹²³ Simply put, massive producers such as Nestlé and Danone can afford cross-product package mandates. Danone, the French dairy producer, has already begun using Nutri-Score¹²⁴ labels on certain products.¹²⁵ Now, with a leg up over producers who have not yet made such adjustments, the company is calling for the EU to make the labels mandatory.¹²⁶ Nestlé,

¹¹⁸ *Europe's Farm to Fork Strategy Must be Nuanced to Protect EU Farmers*, *supra* note 106.

¹¹⁹ Dionysis Boctis, Lefteris Benos, Maria Lampridi, Vasso Marinoudi, Simon Pearson & Claus G. Sørensen, *Agricultural Workforce Crisis in Light of the COVID-19 Pandemic*, SUSTAINABILITY, Oct. 2020, at 1, 2.

¹²⁰ Front-of-pack labels are similar to the nutritional facts labels that Americans are familiar with, although most tend to appear on the actual front of the packaging, and in a smaller, easier to read format.

¹²¹ *Europe's Farm to Fork Strategy Must be Nuanced to Protect EU Farmers*, *supra* note 106.

¹²² Jim Cornall, *Danone and Nestle Join Cross-Sector Call for Nutri-Score on All Foods in EU*, DAIRY REP. (Apr. 28, 2020), <https://www.dairyreporter.com/Article/2020/04/28/Danone-and-Nestle-join-cross-sector-call-for-Nutri-Score-on-all-foods-in-EU> [<https://perma.cc/WZJ2-HR3U>].

¹²³ Morrison, *supra* note 88; Letter from Biljana Borzan, MEP, et al., to Stella Kyriakides, Comm'r for Health and Food Safety, Eur. Comm'n (Apr. 27, 2020) (on file with author).

¹²⁴ Nutri-Score is a nutritional label which converts nutrition information into a simple color-coded score of A through E, moving from green to red. The goal of the label is to help consumers easily evaluate the nutritional value of food products. World Health Org., Int'l Agency for Rsch. on Cancer, *The Nutri-Score: A Science-Based Front-of-Pack Nutrition Label*, at 1, IARC Evidence Summary Brief No. 2 (Sept. 2021), https://www.iarc.who.int/wp-content/uploads/2021/09/IARC_Evidence_Summary_Brief_2.pdf [<https://perma.cc/HA5S-234D>].

¹²⁵ Flora Southey, *Nestle and Danone Back Bid to Enforce Nutri-Score Across Europe*, FOOD NAVIGATOR (Apr. 28, 2020), <https://www.foodnavigator.com/Article/2020/04/28/Nestle-and-Danone-back-bid-to-enforce-Nutri-Score-across-Europe> [<https://perma.cc/24LZ-9AJJ>].

¹²⁶ *Id.*

too, began implementing Nutri-Score labeling in the first half of 2020.¹²⁷ Although the food giants publicly claim their support is based upon likely health benefits for consumers,¹²⁸ the potential for market growth for such companies must not be overlooked. Nestlé is one of the biggest companies in the world, netting well over \$12 billion in profits last year.¹²⁹ Paris-based Danone earned over \$2 billion in profits last year.¹³⁰ Clearly, such companies can afford to implement standardized labeling across their products. Even if they had not already begun such implementation, their profit margins would make such a project easier.

If the Farm to Fork strategy is truly meant to empower small farmers, requirements such as front-of-pack labeling are not likely to help. Small producers do not have the flexibility of multinational conglomerates. In fact, small farms have long faced a crisis of their own.¹³¹ Between 2003 and 2013, more than a quarter of all EU farms disappeared.¹³² At the same time, the average area per agricultural holding increased by 38 percent.¹³³ This demonstrates that the industry is shifting—fewer farms are taking over larger areas of land.¹³⁴ From 2007 to 2013 alone, the number of farms decreased by 22 percent, while the average farm size increased by approximately one-third.¹³⁵ While this trend is clear, the majority of farms in Europe are still small: more than two-thirds of European farms have less than five hectares of land.¹³⁶ More than half of these farms have a standard output of fewer than €333 per

¹²⁷ *Nestlé Announces Industry-Leading Push to Use Nutri-Score in Europe*, NESTLÉ (Nov. 26, 2019), <https://www.nestle.com/media/news/nestle-announces-industry-leading-push-nutri-score-europe> [https://perma.cc/6FWP-JVTH].

¹²⁸ Southey, *supra* note 125.

¹²⁹ *Nestlé: Global 500, Company Information*, FORTUNE (Aug. 10, 2020), <https://fortune.com/company/nestle/global500/> [https://perma.cc/T9X9-6D6W].

¹³⁰ *Danone: Global 500, Company Information*, FORTUNE (Aug. 10, 2020), <https://fortune.com/company/danone/global500/> [https://perma.cc/9BML-SFFG].

¹³¹ This crisis is not unique to the EU. See Alana Semuels, *'They're Trying to Wipe Us Off the Map.'* *Small American Farms Are Nearing Extinction*, TIME (Nov. 27, 2019 1:16 PM), <https://time.com/5736789/small-american-farmers-debt-crisis-extinction/> [https://perma.cc/2NMC-FYT4] (detailing the disappearance of small farms in the U.S.).

¹³² *Over a Quarter of EU Farms Disappeared Between 2003 and 2013*, GLOB. AGRIC. (Feb. 12, 2015), <https://www.globalagriculture.org/whats-new/news/en/31441.html> [https://perma.cc/DF4C-HN4F].

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Opinion of the Court of Auditors on the "Commission proposals for regulations relating to the common agricultural policy for the post-2020 period,"* 2019 O.J. (C 41) 1, ¶ 28.

¹³⁶ *Id.*

month, before costs.¹³⁷ In 2015, the average return on assets of a European farm was only 1.3 percent.¹³⁸ Twelve member states reported a negative return on assets, with the lowest value in Finland, at 5.3 percent.¹³⁹ Results also vary widely by the type of farming, with farms specializing in horticulture seeing the highest return, at 9.4 percent, and mixed farms producing both livestock and crops losing money on average.¹⁴⁰ Such razor-thin margins do not bode well for the implementation of costly labeling mandates without increases to prices paid by consumers. Further compounding producers' attempts to maintain their profit margins, organic farming is up to 40 percent less productive than conventional farming.¹⁴¹

One study demonstrated the impacts that the need for more farming land would have on the environment. As a result of lower crop and livestock yields, the study concluded that if England were to transition from conventional to only organic farming, farms would produce 20–70 percent more greenhouse gases because of the need for additional land use and production.¹⁴² Further, the increased domestic imports required to cover food demand would also increase greenhouse gas emissions.¹⁴³ Although this particular study examined England—which is no longer a member of the EU—and modeled a shift to 100 percent organic farming, in principle, the findings still undermine the Farm to Fork strategy's goals and highlight a major shortcoming.

For that reason, key EU trading partners, including the United States, have criticized the plan's potential impact on food prices. Sonny Purdue, US Secretary of Agriculture under President Donald Trump, warned that the Farm to Fork strategy would worsen attempts to end world hunger.¹⁴⁴ A study by the USDA concluded the proposed regulations would increase the number of food-insecure people in vulnerable regions

¹³⁷ *Id.*

¹³⁸ *EU Farm Economics Overview Based on 2015 (and 2016) FADN Data*, EUR. COMM'N 29 (Oct. 2018), https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/farming/documents/eu-farm-economics-overview-2015_en.pdf [<https://perma.cc/7PP9-6Q9H>].

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Laurence G. Smith, Guy J.D. Kirk, Phillip J. Jones, & Adrian G. Williams, *The Greenhouse Gas Impacts of Converting Food Production in England and Wales to Organic Methods*, 10 NATURE COMM'NS 1, 2 (2019).

¹⁴² *Id.* at 6.

¹⁴³ *Id.*

¹⁴⁴ Sonny Purdue, *Europe Has Forgotten the 'Farm' in 'Farm to Fork'*, EU OBSERVER (Oct. 5, 2020 7:06 AM), <https://euobserver.com/opinion/149489> [<https://perma.cc/MJ92-W7H8>].

by 22 million more than projected without the proposed strategies, if adopted only in the EU.¹⁴⁵ The regulations would reduce agricultural production in the EU by 7–12 percent, in turn driving up worldwide food prices by 9 percent.¹⁴⁶ Finally, worldwide welfare would be reduced by a total \$95.9 billion if only the EU adopts the strategy.¹⁴⁷

To help alleviate cost concerns from producers, industry leaders have called for the mandates to come with increased funding in order to cover the new requirements.¹⁴⁸ Such funding could come through the Union's farm subsidy program, which sends \$65 billion to farmers annually, making it the largest line item in the EU's budget.¹⁴⁹ However, the farm subsidy program is ripe with its own controversies, and studies show that 80 percent of the subsidies go to the biggest 20 percent of recipients.¹⁵⁰ Recently, allegations of fraud have shrouded the program, as investigations have shown that sizable portions of the money have gone to the well-connected rather than the small farmers who need it.¹⁵¹ For example, Hungarian Prime Minister Viktor Orbán was shown to have auctioned government land off to his political allies and family members.¹⁵² Czech Prime Minister Andrej Babiš owns a company which received more than \$42 million in subsidies in 2019.¹⁵³ Babiš, who denies wrongdoing, is now being audited.¹⁵⁴ EU auditors have objected to proposals to give more authority to national leaders on the disbursement of farm subsidies.¹⁵⁵ Thus, increased funding through the already-established EU farm subsidy program may not be sufficiently targeted to

¹⁴⁵ J. BECKMAN, M. IVANIC, J. JELLIFFE, F. BAQUEDANO & S. SCOTT, U.S. DEP'T OF AGRIC., ECON. RSCH. SERV., EB-30, ECONOMIC AND FOOD SECURITY IMPACTS OF AGRICULTURAL INPUT REDUCTION UNDER EUROPEAN UNION GREEN DEAL'S FARM TO FORK AND BIODIVERSITY STRATEGIES (2020).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Bill Tomson, *Cracks Widen in European Farm Support for EU's Farm to Fork*, AGRI-PULSE (June 2, 2021 7:19 AM), <https://www.agri-pulse.com/articles/15968-cracks-widen-in-european-farm-support-for-eus-farm-to-fork> [https://perma.cc/ZQ97-5HH4].

¹⁴⁹ Selam Gebrekidan, Matt Apuzzo, Benjamin Novak, *The Money Farmers: How Oligarchs and Populists Milk the E.U. for Millions*, N.Y. TIMES (Nov. 5, 2019), <https://www.nytimes.com/2019/11/03/world/europe/eu-farm-subsidy-hungary.html> [https://perma.cc/5KTQ-7R3P].

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ 2019 O.J. (C 41), *supra* note 135, ¶ 28.

be effective, but imposing further regulations on producers without offsetting costs could harm food producers with devastating effect.

These revelations raise further questions of the efficacy of supposedly targeted aid, and whether an expansion of European agricultural improvement efforts would actually help those for whom the funding is meant. Unfortunately, the EU's track record is not promising, and the implementation of the Farm to Fork strategy would likely increase disparities between small and large producers.

C. FRONT-OF-PACK NUTRITION LABELING RAISES COSTS,
NEGATIVELY IMPACTS ACCESSIBILITY WHILE FAILING TO
ACHIEVE ITS GOALS

Despite the Commission's call for uniform labeling to help consumers make healthy choices,¹⁵⁶ little evidence exists that such labels are actually effective in achieving that goal. Rather, labels such as Nutri-Score have been critiqued as discriminating against relatively healthy foods, such as sardines, which have a high saturated fat content.¹⁵⁷ Foods such as olive oil, which are highly fatty but considered bedrocks of the healthy Mediterranean diet, would also be dinged by Nutri-Score.¹⁵⁸ At the same time, the same labels depict highly processed foods as healthier if they are made with sugar replacements.¹⁵⁹ Thus, the regulations would risk the existence of small family farms across Europe for little real-world impact. If the Farm to Fork strategy is truly meant to improve consumer health, it must not negatively impact small producers or food accessibility while failing to achieve its stated goals. As will be discussed in Part III, other alternatives to Nutri-Score's traffic light system may be better suited for the Farm to Fork strategy.

Responding to the strategy's publication, academics across the world weighed in on the potential impact of mandatory front-of-pack nutritional labeling.¹⁶⁰ Critiquing Nutri-Score in particular, food science professor Frederic Leroy said the scoring criteria lead to "absurd

¹⁵⁶ EUR. COMM'N, *supra* note 95.

¹⁵⁷ Morrison, *supra* note 88.

¹⁵⁸ Paolo DeAndreis, *Nutri-Score Will Damage Olive Oil Trade, Italian Producers Argue*, OLIVE OIL TIMES (Nov. 29, 2020), <https://www.oliveoiltimes.com/business/nutri-score-will-damage-olive-oil-trade/> [https://perma.cc/V42W-4ERW].

¹⁵⁹ Morrison, *supra* note 88.

¹⁶⁰ *Id.*

outcomes.”¹⁶¹ As a result, labels such as Nutri-Score would serve as a “tool for healthwashing by multinational companies” rather than make any impactful change for consumer choices.¹⁶² Here, the disproportionate impact on small producers is again apparent. Family farms have much less ability to alter their products to receive incrementally better scores on labels compared to giants such as Nestlé.

This impact is the basis of many critiques from Italian producers, who fear that Italian delicacies such as Parma ham and Parmigiano cheese will decrease in consumer popularity as a result of labeling mandates.¹⁶³ Farm lobby group COPA-COGECA summarized the issue succinctly in a recent statement:

By focusing solely on a very limited number of nutrients such as sugar, fat, and salt or the energy intake, we end up setting aside nutritiously valuable food products such as honey and promoting unhealthy ones such as aspartame based diet soft drinks . . . Many of the products that could be damaged by such a simplistic approach to nutrition labelling are revered for their health benefits and are at the heart of traditional diets like the Mediterranean one. They contribute to food diversity, which is a cornerstone of any balanced diet. Painting them red won't help the consumers or the producers.¹⁶⁴

Nutritional experts have also criticized such labels on similar grounds, calling them “junk science” that will negatively impact Europeans’ health.¹⁶⁵ German industry has also critiqued Nutri-Score, calling it a “consumer trap” that will fail to tackle European obesity issues.¹⁶⁶

Still, with its momentum and name recognition, Nutri-Score is the current front-runner in the fight over the adoption of harmonized front-of-

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Oliver Morrison, *Germany Officially Rolls Out Nutri-Score*, FOOD NAVIGATOR (Nov. 17, 2020 4:10 PM), <https://www.foodnavigator.com/Article/2020/11/17/Germany-officially-rolls-out-Nutri-Score> [https://perma.cc/JKG3-AY7V].

¹⁶⁵ *Interview with Raphael Sirtoli, Co-Founder of Nutrita: Is FOP Food Labelling Built on Junk Science?*, EUR. SCIENTIST (July 3, 2020), <https://www.europeanscientist.com/en/public-health/interview-with-raphael-sirtoli-co-founder-of-nutrita-is-fop-food-labelling-built-on-junk-science/> [https://perma.cc/KYK4-MDEH].

¹⁶⁶ Flora Southey, *‘NutriScore is a Consumer Trap’: Industry Group Calls for Front-of-Pack Calorie Logo*, FOOD NAVIGATOR (Aug. 16, 2019 12:22 PM), <https://www.foodnavigator.com/Article/2019/08/16/NutriScore-is-a-consumer-trap-Industry-group-calls-for-front-of-pack-calorie-logo> [https://perma.cc/3XJX-RCR9].

pack labeling despite its controversies.¹⁶⁷ Germany, France, the Netherlands, Switzerland, Spain, and Belgium have all adopted the Nutri-Score system as their voluntary domestic labeling schemes.¹⁶⁸ France, which has taken on the mantle of promoting Nutri-Score as the best plan for the Farm to Fork strategy, has noted that more than four hundred companies in France representing over 25 percent of the market share use Nutri-Score.¹⁶⁹ Research also indicates that Nutri-Score labels best facilitate consumer understanding of nutritional information,¹⁷⁰ but other studies show consumers trust and desire the label less than others.¹⁷¹

Thus, the Farm to Fork strategy is rooted in admirable ideals, with an eye toward reducing greenhouse gas emissions and transforming Europe into a climate neutral zone by 2050. However, while the strategy sets lofty goals for the EU's food industry, its unintended consequences may very well outweigh any potential benefits. The considerable new regulations would increase the cost of production, leading to higher prices for consumers. Ironically, this means more imports will enter the EU, and such products may not carry with them the same demanding standards as those produced under the Farm to Fork strategy. Harmonized front-of-pack food labels, in particular, are likely to disproportionately harm small producers, exacerbating existing issues such as the shrinking number of small farms on the continent. Further, front-of-pack food labeling may actually be based in junk science and will not be effective in increasing healthy eating standards across Europe. Accordingly, the plan will raise costs while undermining the very goals it seeks to promote. Having explored the potential impacts of the Farm to Fork strategy with a special

¹⁶⁷ See generally Danny Harris, *Food Label Fight Splits EU*, CGTN (Aug. 19, 2020 10:50 PM), <https://newseu.cgtn.com/news/2020-08-19/Food-label-fight-splits-EU-T5nN4pMBqg/index.html> [<https://perma.cc/UN3X-GAXB>] (discussing the debate between EU states about the Nutri-Score system); Zosia Wanat & Giorgia Leali, *Italy Collects Allies in Food Label Fight*, POLITICO (Aug. 14, 2020 7:00 AM), <https://www.politico.eu/article/italy-collects-allies-in-food-label-fight/> [<https://perma.cc/6KGE-37SV>] (describing Italy's position on the Nutri-Score system).

¹⁶⁸ Morrison, *supra* note 164.

¹⁶⁹ Wanat & Leali, *supra* note 167.

¹⁷⁰ Manon Egnell, Zenobia Talati, Serge Hercberg, Simone Pettigrew & Chantal Julia, *Objective Understanding of Front-of-Package Nutrition Labels: An International Comparative Experimental Study across 12 Countries*, 10(10) NUTRIENTS 1542 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6213801/> [<https://perma.cc/H8RM-KXAB>].

¹⁷¹ Zenobia Talati, Manon Egnell, Serge Hercberg, Chantal Julia & Simone Pettigrew, *Consumers' Perceptions of Five Front-of-Package Nutrition Labels: An Experimental Study Across 12 Countries*, 11(8) NUTRIENTS 1934 (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6723043/#> [<https://perma.cc/9TX4-QMWJ>].

focus on harmonized front-of-pack food labeling, the next section will explore potential areas for reform.

III. AREAS FOR REFORM

Thus far, this article has outlined the reasons for which the Farm to Fork strategy is likely to cause unintended consequences whose impact could far outweigh the benefit. The final section of this article will examine potential alternatives to current proposals, including embracing more technological change, and already-existing proposals. It will also consider the impact of the COVID-19 pandemic on the Farm to Fork strategy.

A. MODELS FOR INNOVATION: EMBRACING TECHNOLOGICAL CHANGE

Included among the Farm to Fork recommendations are provisions that would limit the use of chemicals in agriculture.¹⁷² Recognizing the polluting impact of pesticides on the environment, the plan would reduce the use of chemical and other hazardous pesticides by 50 percent, reduce fertilizer use by at least 20 percent, and reduce the sale of antimicrobials for farmed animals and in aquaculture by 50 percent.¹⁷³ The use of pesticides can not only harm the environment, but also the health of farmers, as noted by the Food and Agriculture Organization of the UN.¹⁷⁴ However, the plan fails to include any new biotechnologies in its strategy, which would leave farmers ill-equipped to fight infestations.¹⁷⁵ Without any crop protection chemicals, farmers could lose as much as 40 percent of their harvests.¹⁷⁶ Such results are unacceptable for any self-proclaiming sustainable agriculture plan. Rather than turn away from new technologies or make their entry into the market overly burdensome, the Farm to Fork strategy must open the doors to alternatives.

As some writers have noted, the Farm to Fork plan fails to address arguments that organic farming as currently practiced uses a multitude of

¹⁷² EUR. COMM'N, *supra* note 95.

¹⁷³ *Id.*

¹⁷⁴ Jon Entine, *Assessing the Efficacy of the EU Farm to Fork Strategy*, EUR. SEED (Nov. 24, 2020), <https://european-seed.com/2020/11/assessing-the-efficacy-of-the-eu-farm-to-fork-strategy/> [https://perma.cc/ZEG9-4R7G].

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

synthetic and natural chemicals.¹⁷⁷ Some harmful technology, such as the use of copper sulfate by organic farmers, is highly toxic, killing beneficial insects and causing cancer in humans.¹⁷⁸ Despite being more toxic than other known herbicides, copper sulfate is still used by so-called organic producers.¹⁷⁹ Organic farming composting also emits methane, a greenhouse gas “30 times more potent than carbon dioxide.”¹⁸⁰ It also uses older technologies such as tillage, which releases greenhouse gases and contributes to increased erosion levels.¹⁸¹ Such discrepancies undermine the EU’s goals of reversing climate change and improving health outcomes for all Europeans.

If the EU seeks to limit the use of products such as pesticides, it must provide consumers of such products with reasonable alternatives in order to limit negative externalities. New technologies such as genetically modified (GM) seeds that are proven to reduce the need for synthetic pesticides are not permitted without extensive regulatory processes in Europe, nor are they provided for in the Farm to Fork strategy.¹⁸² One type of GM seed, for example, produces a type of bacterium, *Bacillus thuringiensis* (Bt) that resists or even kills harmful pests.¹⁸³ Organic farmers spray Bt onto crops, but by using the GM seeds that produce the Bt on their own, insecticide use on American farms has actually fallen by an estimated 61–81 percent since 1996.¹⁸⁴ These types of technologies have been transformative in the developing world, cutting the use of insecticides while drastically improving yields. The Farm to Fork program does nothing to address such biotechnologies, and nineteen out of the EU’s twenty-seven member states have either full or partial bans on the use of

¹⁷⁷ Jon Entine, *Viewpoint: Farm to Fork Failure—How Europe’s ‘Obsession’ with Organics Undermines the Global Sustainable Farming Movement*, GENETIC LITERACY PROJECT (Aug. 26, 2020), <https://geneticliteracyproject.org/2020/08/26/viewpoint-farm-to-fork-failure-how-europes-obsession-with-organic-farming-undermines-global-sustainable-farming-movement/> [https://perma.cc/5TU5-KLXQ].

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Entine, *supra* note 177.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Daniel Fleming, Fred Musser, Dominic Reisig, Jeremy Greene, Sally Taylor, Megha Parajulee, Gus Lorenz, Angus Catchot, Jeffrey Gore, David Kerns et al., *Effects of Transgenic Bacillus thuringiensis Cotton on Insecticide Use, Heliothine Counts, Plant Damage, and Cotton Yield: A Meta-Analysis, 1996-2015*, 13(7) PLoS ONE (July 2018), <https://doi.org/10.1371/journal.pone.0200131> [https://perma.cc/D5MB-5GET].

¹⁸⁴ *Id.*

GM crops.¹⁸⁵ Allowing the use of biotechnologies that have been incredibly successful in other parts of the globe would bolster the Farm to Fork program's goals.

B. MODELS FOR INNOVATION: USING EXISTING REGULATIONS AND SIMPLIFYING LABELING TO EMPOWER CONSUMERS

As discussed in Part II, the French-based Nutri-Score system is one of the most well-known front-of-pack labeling plans.¹⁸⁶ The system has also been criticized as too formulaic and misleading to consumers.¹⁸⁷ In response to the debate, a coalition of seven countries led by Italy and the Czech Republic introduced a proposed set of principles for a labeling plan before an EU panel in September of 2020.¹⁸⁸ The hallmark of the plan is that labels would be “informative and not prescriptive,” as Italian Agriculture Minister Teresa Bellanova described while presenting Italy’s plan to the European Union Agriculture and Fisheries Council.¹⁸⁹ Rather than assigning a final grade or score value,¹⁹⁰ the plan would provide standardized information about a product, more akin to the American nutritional facts labeling as well as existing EU regulations¹⁹¹ requiring nutrition declarations on prepackaged foods.

The alternative plan would not provide an overall evaluation of the food, but rather include information on the individual nutrients in a product, empowering and enabling consumers to choose foods right for them.¹⁹² Consumer tailoring and choice is key to the Italian plan; the document repeatedly emphasizes the potential for front-of-pack labeling

¹⁸⁵ *Several European Countries Move to Rule Out GMOs*, EUR. GREEN CAP., <https://ec.europa.eu/environment/europeangreencapital/countriesruleoutgmos/> [<https://perma.cc/S4JH-FBKE>].

¹⁸⁶ See generally Harris, *supra* note 167 (discussing the debate between EU states about the Nutri-Score system); Wanat & Leali, *supra* note 167 (describing Italy’s position on the Nutri-Score system).

¹⁸⁷ *Interview with Raphael Sirtoli, Co-Founder of Nutrita: Is FOP Food Labelling Built on Junk Science?*, *supra* note 165.

¹⁸⁸ Paolo Deandreis, *Seven Countries Protest Adoption of Nutri-Score at European Meeting*, OLIVE OIL TIMES (Sept. 28, 2020), <https://www.oliveoiltimes.com/business/countries-protest-nutri-score-labels/85966> [<https://perma.cc/D9HK-KP3R>].

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Commission Regulation 1169/2011, 54 O.J. (L 304) 18.

¹⁹² *Information from the Italian and Czech delegations, on behalf of the Cyprus, Czech, Greek, Hungarian, Italian, Latvian and Romanian delegations*, at 4, 2020 O.J. 10846/20 (Sept. 17, 2020), <https://data.consilium.europa.eu/doc/document/ST-10846-2020-INIT/en/pdf> [<https://perma.cc/3S28-MHJC>].

to help consumers, as long as such labeling is done properly.¹⁹³ Significantly, the plan would not be mandatory for state adoption, but rather voluntary, because of concerns associated with the potential burden on the food industry, especially on small businesses.¹⁹⁴

The plan would also exempt foods with particular cultural heritage from labeling requirements.¹⁹⁵ Thus, any products with the status of Protected Designation of Origin, Protected Geographical Indication, or Traditional Specialties Guaranteed, or any single-ingredient products—including olive oil—would be exempt from the labeling requirement.¹⁹⁶ The proposal would consider foods “as part of the wider context of the daily requirements of a healthy diet,” and thus encourage variation, moderation, and the proper balancing of different food groups.¹⁹⁷ It also notes that any harmonized system adopted by the EU should “take into account the specificities of each Member State’s food culture, typical diet, and national nutritional guidelines.”¹⁹⁸

The new proposal was met with skepticism, especially by proponents of the Nutri-Score model.¹⁹⁹ A press release from Sylvie Guillaume, a French member of the European Parliament, argued that the group of seven countries were bowing to pressure from lobbying organizations, denying that Nutri-Score was misleading for consumers.²⁰⁰ Guillaume, along with the other members of European Parliament who signed onto the letter, also blamed large multinational businesses for the backlash to Nutri-Score, noting that eight of the ten largest multinational companies are opposed to Nutri-Score.²⁰¹ Meanwhile, a campaign of scientists in the fields of nutrition, endocrinology, pediatrics, public health, and epidemiology has thrown its weight behind Nutri-Score, arguing that customers would better be able to make healthy choices with the labels.²⁰²

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ DeAndreis, *supra* note 188.

²⁰⁰ Sylvie Guillaume Press Release, Les lobbies veulent tuer le Nutri-Score européen, (Sept. 25, 2020).

²⁰¹ *Id.*

²⁰² Flora Southey, *Scientists Rally Behind Nutri-Score in Response to Skepticism in Spain: ‘These Attacks are Based on Personal Opinion, Not Science’*, FOOD NAVIGATOR (Jan. 29, 2021 3:37 PM),

Disagreements over the best front-of-pack label to use continues today. At the most recent meeting of the Agriculture and Fisheries Council in December 2020, member states failed to come to a consensus.²⁰³ Instead, the Commission launched a six-week “consultation” to the public, inviting all Europeans a chance to weigh in until February 4, 2021.²⁰⁴

A more flexible model, such as that proposed by Italy and the Czech Republic, may be better suited to meet the Farm to Fork strategy’s needs, especially in light of the COVID-19 health crisis, which significantly disrupted global supply chains and reduced incomes.²⁰⁵ The significant costs on both producers as well as consumers hinder true choice and food access, which could exacerbate inequalities laid bare by the pandemic.²⁰⁶ The United Nations has warned that the number of people in crisis-level hunger²⁰⁷ could increase to as high as 135 million more than originally estimated, a stunning 82-percent increase over the pre-COVID estimate.²⁰⁸ In a speech to the United Nations Security Council, the World Food Programme Executive Director pleaded with members to understand that the world is on the “brink of a hunger pandemic,” and that there is “a real danger that more people could potentially die from the economic impact of COVID-19 than from the virus itself.”²⁰⁹ The world is in a uniquely different place than it was when the Farm to Fork strategy was first introduced, and any policies now adapted should fully consider such realities.

<https://www.foodnavigator.com/Article/2021/01/29/Scientists-rally-behind-Nutri-Score-in-response-to-scepticism-in-Spain-These-attacks-are-based-on-personal-opinion-not-science> [https://perma.cc/7F3E-QWBC].

²⁰³ *Commission’s Consultation on Food Labelling Invites EU Citizens to Have Their Say*, EUR. SCIENTIST (Jan. 21, 2021), <https://www.europeanscientist.com/en/public-health/commissions-consultation-on-food-labelling-invites-eu-citizens-to-have-their-say/> [https://perma.cc/57KR-M8HZ].

²⁰⁴ *Id.*

²⁰⁵ *Food Security and COVID-19*, WORLD BANK (Aug. 3, 2021), <https://www.worldbank.org/en/topic/agriculture/brief/food-security-and-covid-19> [https://perma.cc/B2Z7-CG8A].

²⁰⁶ U.N. Executive Director, WFP Chief warn of hunger pandemic as COVID-19 spreads (Statement to UN Security Council) (April 21, 2020), <https://www.wfp.org/news/wfp-chief-warns-hunger-pandemic-covid-19-spreads-statement-un-security-council> [https://perma.cc/PH9R-NMJP].

²⁰⁷ Also known as “acute food insecurity.” The UN defines crisis-level hunger as “when a person’s inability to consume adequate food puts their lives or livelihoods in immediate danger.” *Senior Officials Sound Alarm Over Food Insecurity, Warning of Potentially ‘Biblical’ Famine, in Briefings to Security Council*, U.N. (Apr. 21, 2020), <https://www.un.org/press/en/2020/sc14164.doc.htm> [https://perma.cc/79P8-UFCR].

²⁰⁸ *Food Security and COVID-19*, *supra* note 205.

²⁰⁹ U.N. Executive Director, *supra* note 206.

Although efforts to promote healthy foods and nutritious choices are worth celebrating, all potential costs must be fully considered. Given the precarious moment in which we are living, public health will be best served by a voluntary, not mandatory, model.

IV. CONCLUSION

As this Comment has shown, food regulations across the world have the ability to distort markets. One of the latest proposals, the Farm to Fork strategy, may be well-intentioned, but regulators should proceed with caution as they consider its impacts. If implemented, the EU's proposed Farm to Fork strategy is likely to bear unintended consequences across the world, harming those it would purport to help. This challenge has only become more pertinent in the context of COVID-19 and the following sudden rise of global hunger. Rather than burdening European producers with overbearing labeling and production requirements, the EU should seek to unleash more innovation to help producers rise to the challenge of competing in the global economy.