

Latest DEVELOPMENTS *on* 'origin' LABELLING'

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AGENDA

1. Origin labelling of the primary ingredient: basic rules
2. Commission Implementing Regulation 2018/775
3. Commission Notice
4. Conclusion

1. Origin labelling of the primary ingredient:

Basic rule

Article 26(3) of EU Regulation 1169/2011:

Where the country of origin or the place of provenance of a food is given and where it is not the same as that of its primary ingredient:

- a) the country of origin or place of provenance of the primary ingredient in question shall also be given; or*
- b) the country of origin or place of provenance of the primary ingredient shall be indicated as being different to that of the food.*

→ *Subject to the adoption of implementing acts*

2. Commission Implementing Regulation 2018/775

2. Commission Implementing Regulation 2018/775

- Adopted in May 2018 - Applicable since 1 April 2020
- Lays down the rules for the application of Article 26(3) of EU Reg. 1169/2011
- Exhaustion of stocks possible for food placed on the market or labelled before 1 April 2020.

■ Scope of application

- prepacked food
- origin of the food given mandatorily or voluntarily
- regardless of how the origin is given.
statements, pictorial presentation, symbols or terms



Made in Belgium



2. Commission Implementing Regulation 2018/775 (2)

■ Out-of-scope:

Not considered as an indication of the origin:

- ✓ customary and generic names
E.g.: Frankfurter sausage; jambon de Paris
- ✓ identification marks accompanying the food for hygiene reasons
- ✓ Name and address of the food business operator

Will be regulated at a later stage:

- ✓ Protected designations of origin (PDO, PGI, wines, spirits and names protected under Reg. 1308/2013)
- ✓ Origin included in registered trademarks

2. Commission Implementing Regulation 2018/775 (3)

■ Additional labelling information:

Indication of the origin of the primary ingredient

or

“[Name of the primary ingredient] do/does not originate from [the country of origin or the place of provenance of the food]”

Regulation provides for an exhaustive list of allowed levels of precision

or any similar wording likely to have the same meaning



3. Interpretation issues

- Key interpretation issues:

What does trigger the application
of Reg. 2018/775?

How to identify the primary
ingredient?

Commission Notice

- Commission Notice on the application of the provisions of Article 26(3) of Regulation (EU) n° 1169/2011
 - Published on 31 January 2020
 - Aims at solving interpretation issues
 - Not legally binding, the ultimate interpretation lies with the CJUE

→ Note: other important guidance

- PFP-FoodDrinkEurope-Eurocommerce Guidance on the Origin Indication of the Primary Ingredient
- Published in January 2019 and updated in May 2020

3.1 In or out-of-scope?

- Non-registered brand names

COM: In-scope → triggers application of Reg. 2018/775

✕ PFP-FDE-EuroCommerce: Unregistered brand names should be considered the same way as registered trademarks as they have similar characteristics and objectives

3.1 In or out-of-scope? (2)

- ‘made in’, ‘product of’, ‘manufactured in’

COM:

In-scope → triggers application of Reg. 2018/775

Even when required by third-country legislation

× PFP-FDE-EuroCommerce: not an indication of origin of a food, in particular when they are provided with the only aim to comply with mandatory requirements and when they are not emphasized on pack by means of the position, the colour, the font-size etc.

3.1 In or out-of-scope? (3)

- Reference to a region or country style

COM: Out-of-scope

These statements do not give an indication on the origin of a food:

- ✓ 'Kind'
 - ✓ 'Type'
 - ✓ 'Style'
 - ✓ 'Recipe'
 - ✓ 'Inspired by'
 - ✓ 'à la'
- + geographical statement



3.1 In or out-of-scope? (4)

- Acronyms, pictorials and other statements which help the consumer to find its local language on a multilingual label



COM: Out-of-scope → do not trigger application of Reg. 2018/775

- Pictures and other statements referring to national or local event/sport team

COM: Assessment on a case-by-case basis



3.1 In or out-of-scope? (5)

- Additional geographical statements on food bearing geographical indications protected under EU law or trade marks

COM: In-scope → trigger application of Reg. 2018/775



× PFP-FDE-EuroCommerce:

Additional statements provided on labels of food bearing geographical indications protected under EU law or trademarks do not trigger the application art. 26(3) FIC when they refer to the same geographical origin

3.1 In or out-of-scope? (6)

- Quid if origin of single processed ingredient is different from origin of raw ingredient?

COM: In-scope if last substantial transformation occurred in a different place than the origin of the raw material ingredient or where the ingredient was sourced from different places.



× PFP-FoodDrinkEurope-EuroCommerce:

The single ingredient is coinciding with the food itself. The place of provenance/country of origin of the single ingredient cannot differ from that of the food.

3.2 Identification of primary ingredient

Primary Ingredient

“an ingredient or ingredients of a food that represent more than 50 % of that food or which are usually associated with the name of the food by the consumer and for which in most cases a quantitative indication is required”

(art. 2.2.q) EU Reg. 1169/2011)

3.2 Identification of primary ingredient (2)

- Quantitative criteria: +50%
- Qualitative criteria:

“ingredients that are usually associated with the name of the food by the consumer and for which in most cases a quantitative indication is required”



COM: FBOs have to

- carefully consider its specific characteristics, nature and the entire presentation of the label,
 - consider the consumers' perception and expectations with regard to the information provided about the food in question,
 - take into consideration whether the origin indication of a particular ingredient is likely to substantially affect consumers' purchasing decisions and whether the absence of such an origin indication would mislead consumers.
- conditions not included in the definition of 'primary ingredient'

3.2 Identification of primary ingredient (3)

■ One or several ingredients?

COM:

- May be several ingredients
- ‘If the FBO identifies, on the basis of the definition, more than one ingredients, the origin of all of these ingredients has to be labelled’.

» PFP-FDE-EuroCommerce:

The food business operator may decide which primary ingredient to indicate.

3.2 Identification of primary ingredient (4)

- Example:

Primary ingredients of a Bolognese sauce that contains more than 50% tomatoes?

- tomato : because + 50%
- minced meat : because this ingredient is usually associated with the name of the product and a quantitative indication is in principle required.



3.2 Identification of primary ingredient (5)

- May a compound ingredient be a primary ingredient?

COM: a compound ingredient whose list of ingredients is provided for by regulation or established by usage may be a “primary ingredient”

- ✓ E.g.: Chocolate can be identified as a primary ingredient when it is a component of a foodstuff. In that case, the origin of chocolate could be mentioned instead of the origin of the cocoa beans.

PFP-FDE-EuroCommerce: if origin of the compound ingredient is not given - the origin of all constituents of the compound ingredient has to be given. → **subject to discussion**

3.2 Identification of primary ingredient (6)

- Should water be considered as a primary ingredient?

Cfr. EP question P.-0065527/2020

No clear-cut answer.... (Answer from Ms Kyriakides dated 5 Feb 2021)

3.2 Identification of primary ingredient (7)

■ May a food have no primary ingredient ?

Yes. According to the Commission when:

- ✓ none of its ingredients represents more than 50 % of that food;
- ✓ none of its ingredients is usually associated with the name of the food by the consumer and in most cases a quantitative indication is not required.

e.g. quatre-quart

4. Conclusion

Conclusion

- Interpretation issues remain huge – cf. Commission versus industry
- Final interpretation lies with the CJUE
- Importance of assessment on a case-by-case basis, taking into account the global perception of the consumer

However:

- Well-known different origin of the primary ingredient is not relevant
- Qualitative part of the definition of the primary ingredient does not refer to the expectations of the consumer as to the origin of the food



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