

# Provision of voluntary indication of the origin or place of provenance of foods in the EU

## Feedback to the European Commission Implementing Regulation

*Document addressed to the European Commission by SAFE – Safe Food Advocacy Europe ASBL*

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## 1. INTRODUCTION

The following feedback paper was drafted by SAFE – Safe Food Advocacy Europe.

SAFE is a non-for-profit independent organisation based in Brussels whose main objective is to **ensure that the consumers' health and concerns remain at the core of the EU's food legislation**. SAFE monitors the EU's food legislation process and cooperates with EU legislators, as with various stakeholders, to draft comprehensive food regulations.

The work of SAFE is supported by its members, which are consumer, food health, obesity and overweight patients', vegan and vegetarian associations, as well as individual members such as independent research scientists, doctors (including oncologists) and nutritionists, spread across Europe (9 EU Member States). To date our membership collectively represents the voice of over 1.500.000 European consumers.

SAFE's missions are:

- to strengthen the voice of civil society in the EU debate concerning the future of EU food regulation;
- to increase public awareness and information on food health and safety issues;
- to identify priority areas for research and raise funds for independent research on food components with direct consequences on consumers' health.

## 2. CONTEXT

The origin or place of provenance of food is a sensitive topic. Developed as a response to the consumers' request to know where the food they buy comes from, Country-of-Origin Labelling (CoOL) is also a reaction to multiple food crises in the last 25 years. It is also an important issue for Member States to prevent frauds or to regulate better the market. Due to these reasons, there has been an increase in the adoption of CoOL rules by Member States. Indeed, given the fact that **the Commission should have proposed this implementing regulation already by December 13<sup>th</sup> 2013**, some Member States enacted regulations for mandatory CoOL on their territories using possibilities left open by article 39 of the FIC regulation.

A [general fear](#) about mandatory Country-of-Origin Labels (CoOL) is that they could increase demand on products from domestic origin, restricting the free movement of goods in the EU. This has been tentatively tackled by FIC, which recalls that national measures imposing a CoOL cannot “*prohibit, impede or restrict the free movement of goods that are in conformity*” with the EU legislation<sup>1</sup>. Hence, CoOL's pre-eminence over harmonised rules is difficult to justify via a consumer protection ground, unless it is on a voluntary basis. This did not prevent [Italy to adopt mandatory rules](#) on CoOL in 2017 on the grounds that they would satisfy consumer expectations for information, enhance the value of product raw materials in terms of marketing to the advantage of each grower and producer, answer accusations of lack of transparency, and solve problems linked to the increasingly common phenomenon of counterfeit products and raw materials imported from abroad.

Indeed, **consumers overwhelmingly approve the enactment of mandatory CoOL rules**. As recalled by the Commission<sup>2</sup>, the food product's origin appears to be the “5<sup>th</sup> most important aspect influencing consumers' purchase decisions [in 2013]”, and it is considered by half of the consumers participating in a Food Chain Evaluation Consortium (FCEC)'s study. In the case of some food products (such as meat and milk<sup>3</sup>), the proportion of consumers checking the place of origin or of provenance of the food rises. Furthermore, FCEC found that in 2013 “more than 90% of consumer respondents find it important that origin is labelled”<sup>4</sup>.

On the contrary, **Member States are divided on this issue**; however, a growing number of Member States (such as France, Italy, Portugal, Lithuania, Greece, Finland, Spain) are adopting CoOLs, usually after notifying and being approved by the Commission.

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<sup>1</sup> Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, Recital 49, as mentioned in the Food Lawyers' Network Worldwide's report “*EU-Food Information Regulation 1169/2011 (...)*”.

<sup>2</sup> In 2013, the Commission adopted a [report](#) for the Parliament and the Council on mandatory CoOL for meat as ingredient, with a related [Commission Staff Working Document](#). Both are based on an external study commissioned by DG SANTE to FCEC (“*Study on the application of rules on voluntary origin labelling of foods and on the mandatory indication of country of origin or place of provenance of meat used as an ingredient*”).

<sup>3</sup> There have been Commission reports on applying CoOL to both meat products (2013) and milk products (2015).

<sup>4</sup> Data from the “Annex D - consumer survey” of the “*Study on the application of rules on voluntary origin labelling of foods and on the mandatory indication of country of origin or place of provenance of meat used as an ingredient*”, (also referenced as the “2013 FCEC study” in specific literature), p.10, mentioned in the 2013 “*Report from the Commission to the European Parliament and the Council regarding the mandatory indication of the country of origin or place of provenance for meat used as an ingredient*” (*loc. cit.*), p.7. A [similar report](#) by BEUC (2013), titled “*Where does my food come from?*”, 70% of responding consumers said they wanted to know the origin of their food products.

### 3. THE CASE OF ITALY

For instance, since April 19<sup>th</sup>, 2017, Italian dairy product must show their ingredients' origin<sup>5</sup>. Dairy products must clearly display on their packaging where their raw materials come from, the country where milking was carried out and where the product was processed<sup>6</sup>. Products with the EU's protected designation of origin (PDO) or protected geographical indication (PGI) are excluded from the law's scope, as they already state the ingredients' origins. Organic foodstuffs and products containing milk but not considered dairy products are also excluded, as are products earmarked for further processing and not intended for consumption.

In May 2017, Italy [formally asked](#) the Commission to allow a CoOL on pasta and rice to show the raw materials' origin: it proposed that pasta produced in Italy showed where wheat was cultivated and milled, while for rice, it proposed that the place of cultivation, processing and packaging should be indicated<sup>7</sup>. According to the Italian government, those rules were to be applied on an experimental basis, allowing Italy to overcome certain legal difficulties in the EU's food labelling law set out in Regulation (EU) No. 1169/2011<sup>8</sup>. The Commission reserved its decision<sup>9</sup>, and Member States discussed it in a consultative Committee in June 2017; meanwhile, Canadian durum wheat exporters [feared sales' drop](#) and protested the possible measures. Italy then accelerated the dossier and on July 20<sup>th</sup>: it repealed the notification and published a decree ordering that all pasta and rice packets sold in Italy had to include CoOL showing where the products were grown, in an experimental way<sup>10</sup>, criticising the EU for not introducing the measure in the internal market<sup>11</sup>. The Commission showed concern, while Canada [asked clarifications](#), underlining trade obligations under WTO and CETA. Two further decrees<sup>12</sup> were adopted on mandatory CoOL for rice and durum wheat used in pasta, leaving Italian manufacturers and distributors until February 16<sup>th</sup>, 2018 to adapt their labelling<sup>13</sup>.

At this point, Italy [made it clear](#) it wished to adopt CoOL for other foods<sup>14</sup>, asking to modify rules at EU level. Those decrees, however, would end if the Commission effectively adopts the implementing regulation on indication of the origin or place of provenance of foods<sup>15</sup>.

<sup>5</sup> The decision was taken through a Ministerial decree of December 9<sup>th</sup>, 2016, and concerns milk of any animal, UHT milk, butter, yoghurt, mozzarella and other cheeses. Fresh milk, however, has different rules.

<sup>6</sup> If milk has been extracted, processed and packaged in the same country, one single label can be used; different labels will have to be used for products where different phases of the process have been carried out in different EU countries; if non-EU countries are involved in the supply or production chain, then another label will have to be used.

<sup>7</sup> If they occur in more countries, the following labels may be used: "EU countries", "non-EU countries", "EU countries and non-EU countries". If durum wheat is cultivated for at least 50% in one country (e.g. Italy), the term "Italy and other EU and/or non-EU countries" may be used.

<sup>8</sup> Italy is the largest EU rice producer; the sector has been in crisis since the start of EU's "Everything But Arms" trade initiative, allowing imports in the EU from least developed countries tariff-free and without quantitative restrictions. This led to a massive increase in rice imports resulting in decreasing market prices.

<sup>9</sup> For three months: it is the legal delay to make observations, and to evaluate how far consumers would demand for information about food.

<sup>10</sup> "For two years"

<sup>11</sup> It included that pasta packages must reveal where wheat was milled; rice packages will state where rice was treated and packaged.

<sup>12</sup> On August 16 and 17, effective by August 21.

<sup>13</sup> Products manufactured or distributed in other member states are exempted from these obligations, which may still create a noticeable distinction between Italian and non/partly Italian products.

<sup>14</sup> Italy further proposed an enlargement of this rule to include the site of production on the label of frozen fruits and vegetables, ready-to-eat salads, processed fish products and other processed foods, but retracted it before its opinion was issued (due by October 2), possibly under harsh opposition by Austria, Denmark, Spain and Germany. Italy amended the proposal and submitted it again to Brussels.

<sup>15</sup> There should be a "switch-off", or annulment, clause.

#### 4. SAFE COMMENTS ON THE PROPOSED REGULATION

SAFE welcomes this initiative and thanks the Commission for allowing Consumers' Organisations to express the collective EU consumers' opinion on this matter.

Before explaining our position, SAFE also wishes to underline that this paper is the third<sup>16</sup> feedback provided to the Commission in one month. Although we are pleased to have the opportunity to provide feedbacks on consumers' food-related issues, we wish to point out that there was a very short time allotted to, and by the consultations' opening just before or during the holiday period. SAFE wonders if such short notices over holidays periods, short (or shortened) time to reply and the subjects' delimitation does allow EU citizens to properly get informed and reply to the Commission's Initiatives.

While SAFE appreciates the fact that this much-awaited proposal was finally published, we would like to point out the following elements that are worthy of concern:

##### a. About the "voluntary" character of the proposed Country-of-Origin Labels.

The Commission maintains that "voluntary origin labelling is the best approach to follow at EU level", as introducing mandatory requirements would have very high implementation costs due to increased traceability checks and segmentation of the supply chain, as well as the absence of consensus on the geographical definition of "origin". However, European consumers did expect a different outcome<sup>17</sup>, as they very often demand to know the origin of a food to support local produce, for a product's characteristics, for ethical and environmental concerns. We believe consumers will favour a preference for food products that adopted the CoOL<sup>18</sup>; FCEC found that in 2013 "more than 90% of consumer respondents find it important that origin is labelled"<sup>19</sup>.

In fact, **the more consumers are informed the more they are pleased with it**, hence becoming more confident to the food chain (through an increase in transparency) and with food products offered to sale. It has been proven, and recalled in the European Parliament's resolution of 12 May 2016, that the most complete indication of the country of origin or of the provenience of food, or of ingredients used in foods, increases consumers' confidence by increasing the transparency of the product, and can be a useful tool (among others) to prevent food fraud<sup>20</sup>. SAFE believes that it is irrelevant to have just "voluntary" CoOL for the primary

<sup>16</sup> SAFE previously replied to the feedback on "Food Contact Materials (FCMs)" (closed on December 26<sup>th</sup>, 2017) and on "Transparency and Sustainability of the EU risk assessment model in the food chain" (closed on January 17<sup>th</sup>, 2018).

<sup>17</sup> If the "origin information for meat ingredient(s) [is not] systematically provided to consumers (...) [the information on the package] does not provide a fully satisfactory solution to consumer demand for origin information"; see "Annex D - consumer survey" of the 2013 FCEC study, mentioned in the 2013 "Report from the Commission to the European Parliament and the Council regarding the mandatory indication of the country of origin or place of provenance for meat used as an ingredient" (*loc. cit.*), p.8.

<sup>18</sup> As recalled by the Commission in this [Report](#), the food product's origin appears to be the "5th most important aspect influencing consumers' purchase decisions [in 2013]", and it is considered by half of the consumers participating in the 2013 FCEC's study.

<sup>19</sup> See footnote 4. In a [report by BEUC, "Where does my food come from?"](#) (2013), 70% of responding consumers said they wanted to know the origin of their food products.

<sup>20</sup> As it could have been, in the case of the horse meat scandal between 2012 and 2013; this was also noted in the European Parliament resolution of 12 May 2016 on mandatory indication of the country of origin or place of provenance for certain foods.

ingredient(s), as not expressing such provenience may be an attempt at misleading the consumers (art.26 (2) FIC). For example, presenting a food as made in the same country where it is sold, whereas its primary ingredient(s) do not come from that country, misleads the consumer wishing to buy local products for environmental reasons<sup>21</sup> (making the choice of food products needing less transportation to reduce CO<sup>2</sup> emissions).

This concern was explicitly voiced out by the European Parliament in 2016<sup>22</sup>. **MEPs noted that “the indication of the country of origin or the place of provenance shall be mandatory** where failure to indicate this might mislead the consumer as to the true country of origin or place of provenance of the food, *in particular if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance*”<sup>23</sup>. This is a further reason to enforce mandatory CoOLs: as labels are not taken into consideration in this implementing legislation, it can be assumed that some producers may use the flag, or some other identifying symbol, of a Member State in their products’ labels as a reference to that Member State’s food tradition, whereas none of their products’ ingredients, or very little of it, was grown and/or processed in said State. This can mislead consumers; a mandatory CoOL would be the adequate answer to prevent such unfair actions.

The voluntary character that appears in the text proposed by the Commission brings some certitudes in the present situation, but it is difficult to accept seen the legislative framework in which it takes place. In fact, SAFE recalls to the Commission that art.26 (3) FIC, to which the Commission’s implementing regulation applies, is part of FIC’s Chapter IV, titled “Mandatory Food Information” (art. 9-35), Section 2, titled “Detailed provisions on mandatory particulars” (art. 17-28). Provisions on “Voluntary Food Information” are enacted only in the following part of FIC (Chapter V, art. 36-37), and are not relevant for the proposed implementing regulation. There is, therefore, some **paradox arising from the Commission’s text, as it seems that the approach chosen is a voluntary one despite referring to mandatory legislative provisions.**

At SAFE, we are not sure that such a text will cause the activation, for example, of the “switch-off”, or annulment, clauses<sup>24</sup> present in the controversial (because not approved by the Commission) Italian legislative texts on mandatory CoOLs for milk products, durum wheat, and rice. In reality, there is some matter to think that such national regulations, requiring mandatory information for issues supposed to be mandatory in the European legislation, may be more in conformity to FIC than the implementing regulation proposed by the Commission, requiring voluntary information for such issues.

Leaving aside the arguments of legal conformity of the proposed implementing regulation to the FIC, **SAFE wished that the Commission would have followed the European Parliament’s**

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<sup>21</sup> Which, as we recalled before, is an acceptable, non-discriminatory concern for a consumer to have, as well as a policy from the Commission.

<sup>22</sup> Point E of the European Parliament resolution of 12 May 2016 on mandatory indication of the country of origin or place of provenance for certain foods.

<sup>23</sup> *Idem*, we underline.

<sup>24</sup> For milk: art.7 (3), [Decreto del 9 dicembre 2016 sull’indicazione dell’origine in etichetta della materia prima per il latte e i prodotti lattieri caseari, in attuazione del regolamento \(UE\) n. 1169/2011, relativo alla fornitura di informazioni sugli alimenti ai consumatori](#) -this CoOL was authorised by the Commission; for rice: art.7 (2), [Decreto del 26 luglio 2017 sull’indicazione dell’origine in etichetta del riso](#) -not authorised under art.39 FIC; for pasta: art.7 (2), [Decreto del 26 luglio 2017 sull’indicazione dell’origine, in etichetta, del grano duro per paste di semola di grano duro](#) - not authorised under art.39 FIC.

**resolution of 12 May 2016<sup>25</sup>, which was explicitly in favour of on mandatory CoOLs**, at least for certain foods (meat and milk; MEPs advised to extend it to other foods, such as eggs, in this resolution, which took place one year before the Fipronil scandal broke out).

**b. About the proposed definitions in art.1, and in particular “EU and non-EU” and “Region, or any other geographical area either within several Member States or within third countries”.**

SAFE is wondering what exactly the proposed definitions could mean, and what they may imply for consumers. It is understandable, in the Common Market, with common rules, that “EU” is opposed to “non-EU”; it is even a requested distinction, as “products produced anywhere in the EU [...] are, by definition, ‘safe’ [products]”<sup>26</sup>. However, **“EU and non-EU” is a questionable definition, if it does not spell out the proportions of the EU and non-EU parts of the product**. Consumers may be misled to think that, when “EU and non-EU” label will apply, the product may be 50% from the EU, and 50% from outside the EU. The Commission’s proposed implementing regulation has no “detailing” level, which would be required for the consumers. The most informed consumers would find difficult comparing products if they must consider that, under a “EU and non-EU” label, the part of the product coming from (possibly all over) the EU goes from 99,99% to 0,01%.

Also, in the case of the “Non-EU” label, **SAFE would like to know whether the Commission plans to consider all non-EU provenance as the same**, without warning consumers more precisely about the country of origin of the food or ingredient. In fact, as already recalled above, a consumer may wish to know the origin of its food (including the ingredients) for reasons such as ethical and environmental concerns. Any normally informed average consumer would search such information firstly, and foremost, on the food package. Removing such information, or preventing it by providing a too broad provenience, will prevent a consumer to be normally informed. Therefore, indications such as “EU”, “non-EU” or “EU and non-EU” may not be meaningful enough for the consumers.

On the second definition pointed out in this section’s title, when proposing the label “Region, or any other geographical area either within several Member States or within third countries”, **SAFE wonders whether the Commission considers that products from Regions across EU external border (e.g. “Macedonia”; “Alps”) as being the same**, whether the food is produced in the EU or not. It is clear that, for products coming from cross-border EU regions (e.g. “Rhine Valley”; “Pyrenees”), this definition makes sense and brings in the much-needed legal certainty and non-discriminatory labelling for a seamless market. Still, for products from Regions across EU external border, SAFE sees that the text of the Commission’s proposed implementing regulation, while attempting to create legal certainty on the matter of indication of the origin or place of provenance of foods in the EU, may bring in more uncertainty for the consumers.

<sup>25</sup> European Parliament resolution of 12 May 2016 on mandatory indication of the country of origin or place of provenance for certain foods

<sup>26</sup> [Commission Staff Working Document](#), p.40, mentioned in the 2013 “*Report from the Commission to the European Parliament and the Council regarding the mandatory indication of the country of origin or place of provenance for meat used as an ingredient*” (*loc. cit.*), p.8.

- c. About art.2 (b) of the proposed implementing regulation, « *or by means of a statement as follows: "(name of the primary ingredient) do/does not originate from (the country of origin or the place of provenance of the food)" or any similar wording likely to have the same meaning for the consumer* »

This definition does not appear to be very well understandable. SAFE supports the Commission's objective to **ensure that origin information is not misleading consumers** and allows them to make an enlightened choice. For this reason, **SAFE cannot accept art.2 (b) of the proposed implementing regulation**: leaving to producers the possibility to declare that "this ingredient does not originate from the country identified as the Country-of-Origin of the food", without specifying the actual origin of said ingredient, could create more confusion for consumers. Notwithstanding the fact that a normally informed consumer may already know that, for example, Belgian chocolate does not use Belgian-grown cocoa, such consumer may wish for more information on the cocoa's provenience. However, **the proposed implementing regulation leaves it for operators to decide on the geographical level of precision of the primary ingredient's origin, with the faculty to prevent the disclosure of such provenience. Art.2 (b) allows partial and misleading information.**

## 5. CONCLUSIONS

### Supporting a mandatory Country-of-Origin Label as it is better for consumers

- **The voluntary character that appears in the Commission's text is difficult to accept seen the legislative framework of FIC.** SAFE recalls that art.26 (3) FIC, to which the implementing regulation applies, is part of FIC's Chapter IV, "Mandatory Food Information", Section 2, "Detailed provisions on mandatory particulars" (art. 17-28). There is some paradox arising from the Commission's text, as it seems that the approach chosen is voluntary despite referring to mandatory legislative provisions.
- SAFE believes that **withholding the primary ingredient(s)' provenience misleads consumers**, in particular when consumers have environmental criteria. Furthermore, labels are not included in this implementing legislation, hence producers may use an identifying symbol of a Member State in their products' labels, whereas none or very little of their products' ingredients was grown and/or processed in said Member State. Mandatory CoOLs are the adequate answer to prevent such unfair actions.
- SAFE wonders what certain proposed definitions could mean, and what they imply for consumers. **"EU and non-EU" is questionable if it does not spell out the proportions of the EU and non-EU parts of the food.** Consumers may be misled to think that, when this label applies, the product may be 50% from the EU and 50% from outside the EU. With no further details, the most informed consumers would find difficult comparing products if they must consider that, under a "EU and non-EU" label, the part of the product coming from the EU goes from 99,99% to 0,01%.

- A “non-EU” label which does consider all non-EU provenance as the same will be too vague. Any normally informed average consumer would search such information firstly, and foremost, on the food package. Removing such information, or providing a too broad provenience, will prevent a consumer to be normally informed.
- With the “Region, or any other geographical area either within several Member States or within third countries” label, SAFE wonders if foods from Regions across EU external border are considered identical, whether produced in EU or not. For such foods, SAFE sees that the proposed implementing regulation, while attempting to create legal certainty, may bring in more uncertainty for the consumers.
- To ensure that origin information is not misleading consumers and allows to make enlightened choices, SAFE cannot accept art.2 (b) of the proposed implementing regulation: leaving to producers the possibility to declare that “this ingredient is not from the country identified as Country-of-Origin of the food”, without specifying its actual origin, could create more confusion for consumers. **Art.2 (b) allows partial and misleading information.**
- **SAFE wished for the Commission to follow the European Parliament resolution of 12 May 2016** on mandatory indication of the country of origin or place of provenance for certain foods, **which acknowledged that the most complete indication of the country of origin** or of the provenience of food, or of ingredients used in foods, **increases consumers’ confidence in the food chain by increasing the transparency** of the product, and can be a useful tool (among others) **to prevent food fraud.**

### The good practices demonstrated by Italy

- From 2017, Italy adopted mandatory rules without notification, to satisfy consumer expectations for information, enhance the value of product raw materials in terms of marketing to the advantage of each grower and producer, answer accusations of lack of transparency, and solve problems linked to the increasingly common phenomenon of counterfeit products and raw materials imported from abroad.
- Italian **mandatory CoOLs show where products were grown, transformed and packaged**, while criticising the EU for not introducing the measure in the internal market. **CoOL rules are generally accepted by consumers and producers.**
- The rules adopted by Italy could fall if the Commission effectively adopt the present implementing regulation. We are not sure it would be fair that such a text could cause the activation of the “switch-off” clauses of the Italian mandatory CoOLs. Such national regulations, requiring mandatory information as described by the EU legislation, may be more in conformity to FIC than the implementing regulation proposed by the Commission, which requires voluntary information.