



PFP-FoodDrinkEurope-EuroCommerce Guidance on Commission Implementing Regulation (EU) 2018/775¹

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The Guidance does not prejudice any future Court's decision on Implementing Regulation 2018/775. There are doubts about the legality of certain provisions of the Implementing Regulation by some within the industry; therefore, this Guidance should not be read as an endorsement of the Implementing Regulation as such.

¹ Commission Implementing Regulation (EU) 2018/775 laying down rules for the application of Article 26(3) of Regulation (EU) No 1169/2011 concerning the provision of information on the country of origin or place of provenance of the primary ingredient of a food where different to that given for the food

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I. Purpose and scope of the Guidance

Article 26 of Regulation (EU) N° 1169/2011 on the provision of food information to consumers foresees the adoption of implementing acts in cases 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.

On 28 May 2018 Implementing Regulation (EU) 2018/775 was adopted to fulfil this obligation. It entered into force on 1 June 2018 for application as of 1 April 2020. This Implementing Regulation clarifies how the origin of primary ingredients shall be labelled when it is different than the given origin of the food. However, a number of uncertainties remain as regards the implementation of these provisions. This Guidance aims to provide a common understanding of the adopted provisions to interested stakeholders, such as food business operators (both small and medium-sized enterprises and large food business operators) as well as EU and national policy-makers.

Each section includes the relevant legal provisions and a factual description of the provisions followed by interpretation where there are uncertainties identified.

II. Main applicable definitions

A number of definitions laid down in the EU legislation are particularly relevant for the Implementing Regulation on Article 26(3):

Terminology	Relevant article	Description
“Country of origin”	Article 2.3 of Regulation (EU) 1169/2011	<p>The definition of country of origin laid down in the Customs Code Regulation (Article 60 of Regulation (EU) No 952/2013²) applies for the purposes of the Implementing Regulation.</p> <p>According to this definition:</p> <ul style="list-style-type: none"> (i) Goods wholly obtained in a single country or territory shall be regarded as having their origin in that country or territory. (ii) Goods the production of which involves more than one country or territory shall be deemed to originate in the country or territory where they underwent their last, substantial, economically-justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture. <p>Detailed rules for determining the country of origin are laid down in Commission Delegated Regulation (EU) 2015/2446.</p>
“Place of provenance”	Article 2(2)(g) of Regulation (EU) 1169/2011	Any place where a food is indicated to come from, and that is not the “country of origin”. The place of provenance could be a town/region/group of countries where the food is indicated to come from, or any geographical area where at least one of the production steps of the food took place.
“Primary ingredient”	Article 2(2)(q) of Regulation (EU) No 1169/2011	<p>“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”.</p> <p><i>Interpretation issues related to the definition of “primary ingredient” are addressed in Chapter V.</i></p>

² Previously Council Regulation (EEC) No 2913/92 and Regulation (EC) No 450/2008 of the European Parliament and of the Council.

III. Provisions of the basic act: Regulation (EU) N° 1169/2011 on the provision of food information to consumers

Article 26 of Regulation (EU) No 1169/2011 establishes general rules and requirements concerning the indication of the country of origin or place of provenance.

The origin labelling requirements laid down in Article 26 **do not apply** to “non-prepacked foods”, **unless** Member States have adopted national rules requiring the application of those requirements to such foods (Article 44 of the Regulation).

Article 26(2)(a) requires the indication of the country of origin or place of provenance of a food where the omission of this information could 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. This is also stated in Recital (29) of the Regulation, which further indicates that “in all cases, the indication of country of origin or place of provenance should be provided in a manner which does not deceive the consumer and on the basis of clearly defined criteria which ensure a level playing field for industry and improve consumers’ understanding of the information related to the country of origin or place of provenance of a food.”

Article 26(3) of Regulation (EU) N° 1169/2011 states that, where the food business operator provides the country of origin or the place of provenance of a food, and where this differs from the origin/provenance of the food’s primary ingredient, the food business operator must provide:

EITHER

The country of origin or the place of provenance of the primary ingredient;

OR

An indication that the country of origin/place of provenance of the primary ingredient is different to the country of origin/place of provenance of the food.

Article 26(3) further states that the application of these requirements is subject to the adoption of an Implementing Regulation by the European Commission. In this regard, Recital (30) of the Regulation points out that, when food business operators want to indicate the origin of a food on a voluntary basis, such indications should also comply with harmonised criteria.

The Commission Implementing Regulation required for Article 26(3) was adopted on 28 May 2018 (Commission Implementing Regulation (EU) 2018/775). Its aim is to establish EU-wide harmonised rules for the application of Article 26(3).

IV. Provisions of Implementing Regulation (EU) 2018/775

Commission Implementing Regulation (EU) 2018/775 contains 4 articles:

- Article 1: Scope
- Article 2: Indication of the country of origin or place of provenance of the primary ingredient
- Article 3: Presentation of the information
- Article 4: Entry into force, date of application and transitional measures

ARTICLE 1: SCOPE

Article 1(1) defines the scope of Commission Implementing Regulation (EU) 2018/775 and excludes customary and generic names from the scope. Article 1(2) excludes protected geographical indications and trade marks from the scope, pending the adoption of further rules.

a. Scope

Relevant provisions:

- Recital (1): “Article 26 of Regulation (EU) No 1169/2011 establishes general rules and requirements regarding the indication of the country of origin or place of provenance of foods, which apply without prejudice to the specific Union provisions.”
- Recital (2): “Article 26(2)(a) of Regulation (EU) No 1169/2011 requires the indication of the country of origin or place of provenance where its omission could mislead the consumer as to the true country of origin or place of provenance of the final food in question, 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. This Article aims at preventing misleading food information which implies a certain origin of a food, when in fact its true origin is different.”
- Recital (3): “Article 26(3) of Regulation (EU) No 1169/2011 provides that 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, the country of origin or place of provenance of the primary ingredient in question shall also be given or indicated as being different to that of the food. It further states that the application of these requirements shall be subject to the adoption of an implementing act.”
- Recital (4): “Article 26(3) of Regulation (EU) No 1169/2011 addresses cases where the country of origin or place of provenance is given mandatorily in accordance with Article 26(2)(a) of the Regulation or voluntarily through any indication such as statements, terms, pictorial presentation or symbols.”
- Article 1(1): “This Regulation lays down the modalities for the application of Article 26(3) of Regulation (EU) No 1169/2011 where the country of origin or place of provenance of a food is given by any means such as statements, pictorial presentation, symbols or terms, referring to places or geographical areas except for geographic terms included in customary and generic names, where those terms literally indicate origin, but whose common understanding is not an indication of country of origin or place of provenance”

The Implementing Regulation sets rules on **how to** apply the provisions laid down in Article 26(3), i.e. on the **modalities** to inform consumers about the country of origin or the place of provenance of the primary ingredient when this is different to that of the food.

According to the text of Implementing Regulation No 2018/775, the provision of this information is required when (1) the country of origin/place of provenance of a food is given (voluntarily or pursuant to Article 26.2(a)³), and (2) the origin of the primary ingredient is not the same as that of the food. These two conditions – (1) and (2) – must be met cumulatively for the Implementing Regulation to apply:

I. *“The country of origin or place of provenance of the food is given”*

As a first condition, the Implementing Regulation applies when the country of origin or place of provenance of the food is given *“by any means such as statements, pictorial presentation, symbols or terms, referring to places or geographical areas”* (Article 1(1)).

According to Recital (4) of the Implementing Regulation, this applies to situations whereby the country of origin/place of provenance of the food is given:

- Voluntarily by the food business operator; **OR**
- Mandatorily as per Article 26(2)(a) of Regulation (EU) 1169/2011.

The indication of the country of origin or place of provenance of a food is mandatory according to Article 26(2)(a) *“where the omission of this information could 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.”*

For instance, in some cases pictures or symbols are put on the label which would be understood by the consumers as meaning that the food comes from a geographical place. If this is actually not the case, and the food originates from a different place, the true country of origin or place of provenance of the food must be given, in order to avoid misleading the consumer.

II. *“The country of origin or place of provenance of the food is different to that of its primary ingredient”*

As a second condition for the Implementing Regulation to apply, the declared country of origin/place of provenance of a food must be different to that of its primary ingredient.

For instance, if the origin labelled on a food’s package is “Italy” (e.g. pasta package with Italian flag), but the primary ingredient of the food originates from France (e.g. durum wheat semolina milled in France), the requirements of the Implementing Regulation apply. On the contrary, if the declared origin in the above example is “Italy” and the primary ingredient also originates from Italy, the Implementing Regulation does not apply (*for more detailed explanations, see Q&A No 1 in the box below*).

³ Doubts by some within the industry exist on whether origin indications mandatorily given pursuant to Article 26(2)(a) could lawfully trigger the application of Article 26(3).

In summary, according to the legal text, the application of the Implementing Regulation is triggered in two situations:

Case 1	When food business operators voluntarily indicate the country of origin or the place of provenance of a food, through statements, pictorial presentation, symbols or terms, <u>and</u> where the primary ingredient originates from a different place.
Case 2	When a product may be deemed to originate from a specific country/region, for instance in cases where pictures or symbols which would imply that the food comes from a certain place are voluntarily put by the food business operator on the label, but the product does not actually originate from that place. In such a case, the true country of origin or place of provenance of the food must be given (in accordance with Article 26(2)(a)). Where this is different to that of its primary ingredient, the Implementing Regulation applies.

Interpretation Q&A

- 1. In case of a food bearing an origin indication pursuant to the application of Article 26(2)(a), according to the Implementing Regulation, Article 26(3) applies. Which origin indication should be considered when applying Article 26(3): the actual origin of the food given pursuant to Article 26(2)(a), or the reference to a geographical place which triggered the application of Article 26(2)(a)?**

It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that the actual origin of the food given pursuant to Article 26(2)(a) is the one to be considered when applying Article 26(3).

Example:

- A food bears a wording/picture/symbol which would imply that the food comes from Spain, while the actual country of origin of the food is Portugal
- In such a case, the food business operator would have to provide the true origin of the food (i.e. Portugal), according to Article 26(2)(a)
- If the origin of the food is different to that of its primary ingredient, according to the Implementing Regulation, Article 26(3) applies. When applying Article 26(3), it is the Portuguese origin indicated on the product that has to be considered (i.e. if the primary ingredient of the food comes from a different place than Portugal, its origin must also be indicated).

- 2. Does the Implementing Regulation apply to statements such as “made in”, “manufactured in”, “produced in”?**

It is the view of PFP, FoodDrinkEurope and EuroCommerce that the Implementing Regulation generally does not apply to statements such as “made in”, “manufactured in”, “produced in” and other similar statements, in particular when they are provided with the only aim to comply with mandatory (or *de facto* mandatory) requirements in some countries (although the food bearing the statement can also be marketed in other countries where the statements are not mandatory), and when they are not emphasized on pack by means of the position, the colour,

the font-size etc. (as it would have been the case if the operator wanted to attract the consumer's attention to a certain origin).

3. Does the Implementing Regulation apply in case of indications which, although referring (directly or indirectly) to a place or geographical area, are not intended to provide information to the consumer about the country of origin or place of provenance of the food?

It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that the Implementing Regulation does not apply when the indications on the label, although referring (directly or indirectly) to a place or geographical area, are not intended to provide information to the consumer about the country of origin or place of provenance of the food. A case-by-case analysis is needed to ascertain this.

Situations to which the Implementing Regulation does not apply include, **but are not limited to:**

1. References to popularity of a product within a specific geography (e.g. "Britain's best loved brand" or "For more than 25 years German's favourite product")
2. Use of pictures/statements (e.g. national/local flags) to refer to a national/local event or to a national/local sport team to celebrate this;
3. Use of a flag to indicate a promotion e.g. "win a holiday to New York";
4. Brand heritage stories (e.g. "Created in 1880 by Leon Lajaunie, pharmacist in Toulouse", "First made in 1908, these delicious dark bars were named after the place where they were created – Bournville in Birmingham" etc.);
5. The use of the local language for the mandatory information on the food package. This also applies to cases where labelling of a food product covers only one language. Indeed, labelling in only one language is not to be regarded as an indication that the food originates from the country(ies) where this language is easily understood by the consumers (e.g. the use of the Polish language on the label of a food marketed in Poland does not mean that the food is of Polish origin).
The use of a foreign language on pack (in addition to the local language) should also not be regarded as an indication of the country of origin or place of provenance of the food; however, care should be taken to avoid that the use of the foreign language is erroneously understood by consumers as a suggestion that the food comes from a certain origin, looking at the overall product's presentation;
6. The use of acronyms or national flags on multilingual packages to help consumers find the information on pack in their language. The fact that there are different acronyms/flags makes it clear that these are not referring to an origin.

A case-by-case assessment should be carried out to verify whether indications that refer to a geographical area are likely to mislead consumers by suggesting that the food comes from that geographical area, which would go against Article 7 of Regulation (EU) No 1169/2011.

4. Does the name/business name and address of the food business operator on the label of food products constitute an indication of the country of origin or place of provenance of the food triggering Article 26(3) and its Implementing Regulation?

No. Article 2(2)(g) of Regulation (EU) 1169/2011 states that the name/business name and address of the food business operator on the label does not constitute an indication of the country of origin or place of provenance of the food. Therefore, the name/business name and

address of the food business operator which are labelled on food and drink products are not subject to Article 26(3) and its implementing Regulation.

- Examples:
 - “[Name/business name of the FBO], PO box, town, country”
 - “Produced for: [Name and address of FBO], town, country.”
 - “Made by [name/business name of the FBO], PO box, town, country.”
 - “[Name/business name of the FBO], street, town, country and address of the factory where the product has been produced or packed”

The above examples are only indicative. Any combination of the above wordings or different wordings could also be used.

5. Is the origin of an ingredient (when indicated) triggering the application of the Implementing Regulation?

No. It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that the application of the Implementing Regulation is triggered when the origin/provenance *of the food* is given (and when this is different to that of its primary ingredient). If only the origin/provenance of the primary ingredient(s) and/or of other ingredients is given, but not that of the food, Article 26(3) and Implementing Regulation (EU) 2018/775 do not apply.

- Examples:
 - “Asparagus soup with Spanish asparagus”: the origin of the ingredient (asparagus) is given, but not that of the food. Therefore, the Implementing Regulation does not apply.
 - “Biscuit coated in Belgian Chocolate”: the origin of the ingredient (chocolate) is given, but not that of the food. Therefore, the Implementing Regulation does not apply.

In order to avoid any confusion, care should be taken to avoid the impression that the indication of the country of origin/place of provenance refers to the food and not to the primary ingredient/to other ingredients (also looking at the overall presentation on the package).

The Implementing Regulation does also not apply in cases where indications concerning the country of origin or place of provenance of the food’s ingredients are provided according to national or EU rules (e.g. indications on the place of farming of agricultural raw materials provided according to Council Regulation (EC) No 834/2007 on organic products).

6. Does the Implementing Regulation apply to foods with no primary ingredient?

The Implementing Regulation applies only when the declared origin/provenance of the food is different to that of its primary ingredient. However, there are foods without a primary ingredient, i.e. foods where none of the ingredients is above 50% in the product’s composition, and where none of the ingredients can be considered as usually associated with the name of the food by the consumer. As those foods do not have a primary ingredient, the Implementing Regulation does not apply.

- Example:

- “Muesli”: none of the ingredients typically makes up more than 50% and there is not one ingredient which is usually associated with the name of the food by the consumer. A variety of grains, dried fruits and nuts can be used at different amounts.
- Multivitamin juice or multi-fruit juices, where no ingredient represents more than 50% of the product, and none can be seen as usually associated with the name of the food by the consumer, as the presence of several components is what is characteristic of these products.
- Assortments of snacks (e.g. assortment of salted products such as “small canapés”; assortment of Asian snacks...), where many different snacks are present in the package, so that it is not possible to identify an ingredient which represents more than 50% or one which is usually associated with the name of the food by the consumer.

See Chapter V for interpretation Q&A on the notion of primary ingredient.

b. Exemptions

The Implementing Regulation **does not apply** to the indications listed below:

1. Customary and generic names

Relevant provisions

- *Recital (8): “Customary and generic names including geographic terms that literally indicate origin, but whose common understanding is not an indication of origin or place of provenance of the food, should not be covered by this Regulation.”*
- *Article 1(1): “This Regulation lays down the modalities for the application of Article 26(3) of Regulation (EU) No 1169/2011 where the country of origin or place of provenance is given by any means such as statements, pictorial presentation, symbols or terms, referring to places or geographical areas except for geographic terms included in customary and generic names, where those terms literally indicate origin, but whose common understanding is not an indication of country of origin or place of provenance.”*

Article 1(1) and Recital (8) clarify that the Implementing Regulation does not apply to customary and generic names which:

- include terms referring to a geographical place, and which therefore can be seen as literally indicating an origin,
but
- which are not commonly understood by consumers as an origin indication.

The definitions of “customary and generic names” can be interpreted as being a reference to the following legislative definitions:

- According to Regulation (EU) No 1169/2011, “*customary name*” means a name which is accepted as the name of the food by consumers in the Member State in which that food is sold, without that name needing further explanation”.

- As for generic names, a definition for a similar wording ("*generic terms*") is provided for by Regulation (EU) No 1151/2012: "*generic terms means the names of products which, although relating to the place, region or country where the product was originally produced or marketed, have become the common name of a product in the Union*".

The geographical indications included in generic and customary names can refer to:

- A method of production, a recipe, or a culinary characteristic → In such a case, the geographical indication included in the generic or customary name, rather than informing the consumer of the geographical origin of the food, indicates that the food has been produced according to a specific recipe or method of production, or using certain ingredients/flavours, thus allowing the consumer to identify a certain product and/or to underline a certain quality/taste of the product. In some cases, the recipes and methods of production have been codified by private or public bodies and organisations⁴; in other cases, they have not been codified as such but they are well known and understood by consumers.
- A plant variety or an animal breed → in such a case, the geographical indication included in the generic or customary name indicates a specific plant variety or animal breed, thus allowing the consumer to identify a certain product (rather than informing him of the geographical origin of the plant/animal).

An **indicative and non-exhaustive** list of customary and generic names includes:

Recipes, methods of production, culinary characteristics:

- *Wienerkorv*
- *Indian Pale Ale*
- *Schwarzwälder Kirschtorte – Black forest cherry cake*
- *Wiener Würstchen*
- *Frankfurter Wurst*
- *Ragu' alla Bolognese, Sugo alla Bolognese*
- *Risotto alla Milanese*
- *Pesto alla Genovese*
- *Pesto alla siciliana*
- *Insalata Russa, ensaladilla rusa*
- *Pasta all'amatriciana*
- *Thai green curry*
- *French nougat, Fransk nougat*
- *Galette Bretonne*
- *Pains Suédois*
- *Crème anglaise*
- *Zürcher Geschnetzeltes*
- *Wiener Schnitzel*

⁴ For instance, in some country national legislation listing generic and/or customary names is in place (e.g. Spanish Royal Decree 474/2014 on the quality specifications for meat products which, in its Annex II lists generic denominations ('consagradas por el uso').

- *New York cheese cake*
- *Hungarian Goulash*
- *Crema catalana*
- *Indian Tikka Masala*
- *Agua de Valencia*
- *Mexican Enchiladas*
- *Cocido madrileño*
- *Texas barbecue sauce*
- *Gusto Malaga (Malaga Taste for edible Ice)*
- *Spagnola (Spagnola taste for edible Ice)*
- *Salame Milano, Salame Napoli*
- *Mexican chilli*
- *Gaufre de Bruxelles, Gaufre de Liège*
- *American pancakes*
- *Baseler Mehlsuppe*
- *Panettone Milano*
- *Pandoro Verona*
- *Brie*
- *Camembert*
- *Cheddar*
- *Edam*
- *Emmentaler*
- *Gouda*
- *Mustard de Dijon*
- *Chorizo de Pamplona*
- *Longaniza de Aragón*
- *Salchichón de Málaga*
- *Imperial de Lorca*
- *Flamenquín cordobés*
- *Mortadela cordobesa*
- *Französische Zwiebelsuppe*
- *Serbische Bohnensuppe*
- *Linzer Torte*
- *Linzer Schnitte*

Plant varieties or animal breeds:

- *Brussels sprouts / Choux de Bruxelles (plant variety),*
- *Portobello mushrooms / Champignons de Paris (plant variety),*
- *Boeuf Charolais (breed of cattle),*
- *Aberdeen Angus beef (breed of cattle)*
- *Melon Charentais (plant variety),*
- *Tomate Marmande (plant variety)*

Interpretation Q&A

1. **Would “legal names” which literally indicate geographical places but whose common understanding is not an indication of the country of origin or place of provenance of the food, fall in the scope of the Implementing Regulation?**

It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that the intention of Article 1(1) and Recital (8) is to exclude from the application of the Implementing Regulation any terms which, although literally indicate a geographical origin, are not understood as an indication of the country of origin or the place of provenance of the food by the average consumer. Therefore, “legal names” which are defined and mandatorily required by Articles 2(2)(n), 9(1)(a) and 17 of Regulation (EU) No 1169/2011 would also be out of the scope under those circumstances, along with “customary names” and “generic terms”. As those names are mandatorily required by EU or national legislation, they cannot be considered as a voluntary origin indication.

Examples :

- “London Gin”, “Pastis de Marseille” (Regulation (EC) 110/2008)
- «Jambon de Paris», «Saucisse de Toulouse» (French Code of cured meat)

2. Does the Implementing Regulation apply when terms such as “kind”, “type”, “style”, “inspired by”, “flavour”, “à la” or statements such as “based on a X recipe” including reference to a geographical place are used to describe the food (e.g. American-style beer)?

It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that the Implementing Regulation does not apply when terms such as “kind”, “type”, “style”, “inspired by”, “flavour”, “à la” or statements such as “based on an X recipe” which include a reference to a geographical place are used. Indeed, those terms do not constitute an indication of the country of origin or place of provenance of the food, but the reference to a geographical place is merely made to describe the food’s characteristics (e.g. “American-style beer”).

In line with Article 7 of Regulation (EU) 1169/2011, a case-by-case analysis is advisable to ensure that consumers are not misled by the use of those expressions, looking at the overall presentation on the package. It is also important to remember that for some products (e.g. for spirit drinks⁵, for products bearing a EU quality scheme⁶) the use of terms such as those indicated above is forbidden.

3. How to deal with situations where a food is a customary name/generic name in one Member State but not in other?

According to Article 17 of Regulation (EU) No 1169/2011, in the absence of a legal name, the name of the food shall be its customary name, or, if there is no customary name or the customary name is not used, a descriptive name of the food shall be provided. The use in the Member State of marketing of the name of the food under which the product is legally manufactured and marketed in the Member State of production is allowed by the Regulation. However, when doubts exist that a food name may not be a customary name in the Member State of marketing, care should be taken to avoid the impression that the name of the food in the local language refers to its origin/provenance (also looking at the overall presentation on the package) in order to avoid misleading the consumer, in line with Article 7 of Regulation (EU) No 1169/2011. While Article 17 of Regulation (EU) No 1169/2011 literally refers to “customary names”, it is the understanding of PFP, FoodDrinkEurope and EuroCommerce that the same would apply to “generic names” (which normally constitute “customary names”).

⁵ Regulation (EC) No 110/2008.

⁶ Regulation (EU) No 1151/2012.

2. Protected geographical indications

Relevant provisions:

- Recital (5): “Voluntary indications such as geographical statements included in, or accompanying the name of the food, may also be part of product designations protected as geographical indications or as trade marks according to specific EU legislations.”
- Recital (6): “Indications of the country of origin or the place of provenance of a food which are part of product designations protected as geographical indications under Regulations of the European Parliament and of the Council (EU) No 1151/2012 (2), Regulation (EU) No 1308/2013(3), Regulation (EC) No 110/2008 (4) or Regulation (EU) No 251/2014 (5), or protected pursuant to international agreements fall within the scope of Article 26(3) of Regulation (EU) No 1169/2011. In view of the fact that for these product designations an intrinsic link between product characteristics and geographical origin exists, that they are regulated by specific rules, including rules on labelling, and taking into consideration the specific character of these names as intellectual property rights, it is necessary to further examine how the origin of the primary ingredient provided by Article 26(3) of Regulation (EU) No 1169/2011 should be indicated for said names.”
- Article 1(2): “This Regulation shall not apply to geographical indications protected under Regulation (EU) No 1151/2012, Regulation (EU) No 1308/2013, Regulation (EC) No 110/2008 or Regulation (EU) No 251/2014 or protected pursuant to international agreements, nor registered trademarks where the latter constitute an origin indication, pending the adoption of specific rules concerning the application of Article 26(3) to such indications.”

The Implementing Regulation does not apply to the following protected geographical indications:

- Quality schemes established by Regulation (EU) No 1151/2012, such as PDO (protected designation of origin) and PGI (protected geographical indication);
- Indications established by Regulation (EU) No 1308/2013 for wine;
- Geographical indications of spirit drinks as set by Regulation (EC) No 110/2008;
- Geographical indications of aromatised wine products as set by Regulation (EU) No 251/2014;
- Other geographical indications protected pursuant to international agreements.

According to the Implementing Regulation, these indications fall within the scope of Article 26(3) of Regulation (EU) N° 1169/2011. However, in light of their specific character, Implementing Regulation 2018/775 recognises in the second sentence of recital (6) and in Article 1(2) the need to further examine how the country of origin/place of provenance of the primary ingredient should be indicated for these indications.

Therefore, pending the adoption of specific rules concerning the application of Article 26(3) to the above protected geographical indications, the Implementing Regulation does not apply to them; in other words, the presence of protected geographical indications on the label does not trigger the obligation to provide information concerning the country of origin or the place of provenance of the primary ingredient of the food, when this is different to that of the food.

Interpretation Q&A

1. According to the legal text, would the Implementing Regulation apply to a food which, beyond bearing a protected geographical indication, also bears other visuals / statements referring to the same geographical origin?

It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that, pending the adoption of specific rules, the Implementing Regulation does not apply to foods bearing a protected geographical indication, including in cases where they also bear other visuals / statements referring to the same geographical origin. The operator should take care that the information on pack is not misleading, in line with Article 7 of Regulation (EU) No 1169/2011.

3. Registered trademarks⁷

Relevant provisions:

- *Recital (5): “Voluntary indications such as geographical statements included in, or accompanying the name of the food, may also be part of product designations protected as geographical indications or as trade marks according to specific EU legislations.”*
- *Recital (7): “Indications of the country of origin or the place of provenance of a food which are part of registered trade marks fall within the scope of Article 26(3) of Regulation (EU) No 1169/2011. Trade marks may consist of any signs, in particular words, including personal names, designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs give to the goods or services of one undertaking a distinctive character. The purpose of trade marks is to allow the consumer to identify a particular commercial source or trade origin in connection with specific good and/or services. Taking into consideration the specific character and objective of trade marks, it is appropriate to further examine how the origin of the primary ingredient provided by Article 26(3) of Regulation (EU) No 1169/2011 should be indicated when required for trade marks.”*
- *Article 1(2): “This Regulation shall not apply to geographical indications protected under Regulation (EU) No 1151/2012, Regulation (EU) No 1308/2013, Regulation (EC) No 110/2008 or Regulation (EU) No 251/2014 or protected pursuant to international agreements, nor registered trade marks where the latter constitute an origin indication, pending the adoption of specific rules concerning the application of Article 26(3) to such indications.”*

According to the Implementing Regulation, indications of the country of origin or the place of provenance of a food which are part of registered trade marks fall within the scope of Article 26(3) of Regulation (EU) N° 1169/2011. However, in light of the specific character and objectives of trade marks, the Implementing Regulation also states that it is appropriate to further examine how the origin of the primary ingredient should be indicated when required for trade marks.

Therefore, pending the adoption of specific rules concerning the application of Article 26(3) to trade marks, the Implementing Regulation does not apply to registered trade marks; in other words, the presence on the label of a trade mark which includes reference to a place or geographical area (by means of e.g. terms, pictures, or symbols) does not trigger the obligation to provide information concerning the country of origin or the place of provenance of the primary ingredient of the food, when this is different to that of the food.

⁷ Doubts by some within the industry exist on whether Article 26(3) lawfully applies to trademarks.

This “temporary exemption” applies both to trade marks which are registered under Directive (EU) No 2015/2436 and to those which are registered in a national or regional register (e.g. in a Member State, in Benelux).

Interpretation Q&A

1. Does the Implementing Regulation apply to single elements of a registered trade mark?

It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that single elements of a registered trade mark (e.g. a symbol/flag which is part of a trademark) which refer to a geographical place and are not capable of being protected as a trade mark on their own are out of the scope of the Implementing Regulation.

2. Does the Implementing Regulation apply to brand names which have not been registered?

It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that unregistered brand names (including single elements of a brand) should be considered the same way as registered trademarks, as they have similar characteristics and objectives. The registration just changes the burden of prove in a legal case. This interpretation is further supported by Regulation 2017/1001 on the EU trade marks, which provides protection also for non-registered trademarks.

4. Identification marks

Relevant provision:

- *Recital (9): “For the purpose of this Regulation, identification marks accompanying the food in accordance with Regulation (EC) No 853/2004 of the European Parliament and of the Council (1) laying down specific hygiene rules for food of animal origin should not be considered as an indication of the country of origin or the place of provenance”*

The Implementing Regulation does not apply to the identification marks that food business operators must apply to products of animal origin, when and as required by Regulation (EC) No 853/2004.

ARTICLE 2: INDICATION OF THE COUNTRY OF ORIGIN OR PLACE OF PROVENANCE OF THE PRIMARY INGREDIENT

According to Article 26(3) of Regulation (EU) No 1169/2011, when the country of origin or place of provenance of a food is given, and this is different to that of its primary ingredient, the food business operator **must**:

EITHER

1. Indicate the country of origin or the place of provenance of the primary ingredient;

OR

2. Provide an indication that the primary ingredient has a different origin/provenance to that of the food.

Article 2(a) of the Implementing Regulation sets rules on **how to apply option 1**, i.e. on how to indicate the specific country of origin or place of provenance of the primary ingredient. Article 2(b) of the Implementing Regulation sets rules on **how to apply option 2**, i.e. on how to indicate that the country of origin or place of provenance of the primary ingredient is different to that of the food, without further specifying this country of origin or place of provenance.

When opting for option 1, it is important to note that the food business operator is **free to decide** whether to indicate:

EITHER

- The country of origin (i.e. the place of last substantial transformation)

OR

- The place of provenance (i.e. any place from which the food comes from, and that is not the “country of origin”)

of the primary ingredient.

For the definitions of “country of origin” and “place of provenance”, see Chapter II.

It is important to note that it is up to each food business operator to decide whether to use option 1 or option 2. It is advisable to take such a decision in consultation with the primary ingredient producers (in order to take into account the technical feasibility of using one or the other option as well as the specific rules of origin which may differ from one sector to another, from an ingredient to another).

Interpretation Q&A

1. **How can the food business operator decide on whether to indicate the country of origin or the place of provenance of the primary ingredient?**

The food business operator may decide, on a case-by-case basis, whether to indicate the country of origin or the place of provenance of the primary ingredient. Where appropriate, the operator may wish to consult its primary ingredient(s) supplier(s), taking into consideration the technical feasibility of providing the country of origin *versus* the place of provenance, consumers' expectations/perception for the concerned ingredient and general principles of consumer information.

a. Option 1: Indication of the country of origin or place of provenance of the primary ingredient

Relevant provisions:

- *Recital (10): “To enable consumers to make better informed choices, it is necessary, by means of this Regulation, to set specific rules which should apply where the country of origin or the place of provenance of the primary ingredient is given. Those rules shall ensure that such information is sufficiently precise and meaningful.”*
- *Recital (11): “It is therefore appropriate that such indication for the primary ingredient is provided with reference to a geographical area which should be easy to understand for the consumer. The use of invented names for regions or other geographical areas which are not meaningful information or could mislead the consumer as to the real place of provenance of the primary ingredient should be prohibited.”*
- *Recital (12): “Where a primary ingredient is a food subject to specific Union provisions on the indication of the country of origin or the place of provenance, these provisions could be alternatively used for the purposes of Article 26(3)(a) of Regulation (EU) No 1169/2011.”*
- *Article 2(a): The country of origin or the place of provenance of a primary ingredient which is not the same as the given country of origin or the given place of provenance of the food shall be given:
(a) with reference to one of the following geographical areas:
(i) ‘EU’, ‘non-EU’ or ‘EU and non-EU’; or
(ii) Region, or any other geographical area either within several Member States or within third countries, if defined as such under public international law or well understood by normally informed average consumers; or
(iii) FAO Fishing area, or sea or freshwater body if defined as such under international law or well understood by normally informed average consumers; or
(iv) Member State(s) or third country(ies); or
(v) Region, or any other geographical area within a Member State or within a third country, which is well understood by normally informed average consumers; or
(vi) The country of origin or place of provenance in accordance with specific Union provisions applicable for the primary ingredient(s) as such.
[...]*

Where food business operators opt to indicate the specific country of origin or place of provenance of the primary ingredient, they **must** do so by referring to **one** of the below geographical areas:

- (i) “EU”, “non-EU” or “EU and non-EU”;
- (ii) Region, or any other geographical area either within several Member States or within third countries, if defined as such under public international law or well understood by normally informed average consumers;
 - *Examples: Baltic countries, Alps, Pyrenees, Nordics, Mediterranean, Middle East, West Africa.*
- (iii) FAO Fishing area, sea or freshwater body, if defined as such under international law or well understood by normally informed average consumers;

- *Examples: Black Sea, North Sea.*
- (iv) Member State(s) or third country(ies);
 - *Examples: France, Switzerland, Spain.*
- (v) Region, or any other geographical area within a Member State or within a third country, which is well understood by normally informed average consumers;
 - *Examples: Bavaria, Tuscany, Loire Valley.*
- (vi) The country of origin or place of provenance in accordance with specific Union provisions applicable for the primary ingredient(s) as such.
 - *Examples: country of slaughter and rearing (with some exemptions) for prepacked fresh, chilled and frozen meat of swine, sheep, goats and poultry according to Regulation (EU) No 1337/2013; country of birth, fattening and slaughtering (with some exemptions) for beef and beef products according to Regulation (EC) 1760/2000; the origin indications foreseen by Directive 2001/110/EC for honey and by Commission Implementing Regulation (EU) No 29/2012 for olive oil...*

Food business operators are **free to decide** at which level of geographical precision they want to provide the origin of the primary ingredient, i.e. they can choose freely among the options listed above (*indents (i) – (vi)*).

At the same time, the indication of the country of origin/place of provenance must be provided with reference to a geographical area which is easy to understand for the consumer. Therefore, as clarified in Recital (11), invented names of geographical areas which are not meaningful for the consumer or which could mislead the consumer cannot be used (e.g. “from warm countries”, “from traditional regions”).

Where a primary ingredient is a food for which specific EU rules on the indication of the country of origin or the place of provenance exist (e.g. when the primary ingredient is beef, swine, sheep, goat and poultry meat; honey; olive oil; fish; fruits & vegetables; eggs; ...), these specific rules **can** be used for indicating its country of origin/place of provenance, when and as applicable. It is important to note that there is no obligation to apply these specific rules, and in principle the possibility remains to indicate the country of origin or the place of provenance of the primary ingredient by referring to any other of the geographical areas listed in Article 2(a) (*indents (i) to (v) above*).

Interpretation Q&A

1. Can a list of both Member States and Third Countries be declared as the origin of a primary ingredient?

It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that it is possible to list both Member States and third countries as the origin of the primary ingredient.

Example:

- with [primary ingredient] from Belgium, France and Switzerland

2. Can a list of multiple regions or geographical areas within a Member State or within a third country, or within several Member States or Third countries be declared as the origin of the primary ingredient?

It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that it is possible to list multiple regions or geographical areas within a Member State or within a third country, or within several Member States or Third countries as the origin of the primary ingredient.

Example:

- with [primary ingredient] from England and Scotland
- with [primary ingredient] from Brittany and Normandy
- with [primary ingredient] from the Middle East and North Africa

3. What if the primary ingredient comes from 2 or more Member States? Should both/all Member States be on the label?

It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that, if a primary ingredient has multiple countries of origin/places of provenance, the food business operator is free to choose to:

- i. List all the countries of origin/places of provenances on the label (e.g. “[primary ingredient] from France, Belgium and Germany”), in accordance with Article 2(a);
- ii. Indicate the origin/provenance at a lower level of precision (e.g. if the primary ingredient comes from 3 different Member States, the operator can use the indication “EU”), in accordance with Article 2(a);
- iii. Indicate that the primary ingredient has a different country of origin/place of provenance to that of the food by means of a statement as indicated in Article 2(b).

○ Example:

- Option (1): with [primary ingredient] from Belgium, France and Switzerland
- Option (2) with [primary ingredient] from EU and non-EU
- Option (3): with [primary ingredient] of different origin.

4. Would it be possible to indicate the origin of the primary ingredient by referring to different geographical levels (e.g. "EU and Switzerland")?

It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that, while such a possibility is not explicitly foreseen in the Implementing Regulation, it should be possible to indicate the origin of the primary ingredient by referring to different geographical levels (e.g. "EU and Switzerland"), as this is more informative for consumers than referring to the higher geographical level (e.g. “EU and non-EU”).

5. Can the FBO give more details on the origin of the ingredients? E.g.: for cheese pizza : cheese made in XX or cheese made in XX with milk from XX

The FBO should indicate at least one origin but is free to give more details about the production process of the primary ingredient or the origin of other ingredients.

b. Option 2: Indication that the primary ingredient has a different country of origin or place of provenance to that of the food

Relevant provisions:

2. Recital (13): “Where food business operators opt to only indicate the country of origin or place of provenance of the primary ingredient as being different to that of the food, for example because of multiple or variable supply sources and particular production processes, it is appropriate to provide a framework which takes into account the various circumstances of food processing. The relevant indication should ensure comprehensible information to the consumer.”
3. Article 2(b): “The country of origin or the place of provenance of a primary ingredient which is not the same as the given country of origin or the given place of provenance of the food shall be given: [...] (b) 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.”

Where food business operators opt to indicate that the primary ingredient has a different country of origin or place of provenance to that of the food, without further specifying this country of origin or place of provenance, they **must** do so by using the below statement:

“(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”. The possibility to use an alternative statement provides some flexibility to food business operators as to the specific wording to be used to indicate that the primary ingredient has a different country of origin or place of provenance to that of the food. It is the responsibility of the food business operator to decide whether to use the statement indicated in Art. 2(b) or to choose an alternative wording which is deemed to have the same meaning for the consumer, and it is up to enforcement authorities and ultimately the Courts to decide whether this has been met.

Suggested (non-exhaustive) examples of possible wordings include:

- “[primary ingredient] of different origin”;
- “with [primary ingredient] from different origin”;
- “[primary ingredient] not from X origin”
- “[primary ingredient] not from X”
- “[primary ingredient] from outside X”

It is important to note that, although the option provided for in Article 2(b) can be the only feasible option in certain situations (e.g. when the primary ingredient has multiple and variable origins/provenances), this option is not limited to specific circumstances, and can always be used by food business operators.

Interpretation Q&A

1. Would it be possible to use wordings which provide more accurate/additional information to the consumer on the various situations which may occur?

It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that it should be possible to use wordings which provide more accurate/additional information to the consumer on the various situations which may occur (e.g. situations where the origin of the primary ingredient is partially the same as that of the food and partially different; situations where the primary ingredient normally has the same origin as that of the food, but for short periods in the year - due to e.g. seasonality -, it has a different origin...).

So, for instance, it should be possible to use statements such as: “[primary ingredient] partially of different origin” ; “with [primary ingredient] which has also different origin”; “during short periods over the year, [primary ingredient] of different origin”; “[primary ingredient] not solely from X origin” ...

It is important to note that the above examples are only indicative, and that other statements may be used to reflect the various situations which may occur.

Where appropriate, the choice of the specific wording could be done in consultation with the primary ingredients producers.

ARTICLE 3: PRESENTATION OF THE INFORMATION⁸

Article 3 of the Implementing Regulation describes the rules with regard to the presentation of the origin/provenance information.

Relevant provisions:

- Recital (14): “Information provided with respect to primary ingredient in accordance with this Regulation should complement the information given to the consumers on the country of origin or place of provenance of the food, and should be easily visible and clearly legible and where appropriate indelible.”
- Article 3: “1. Information provided pursuant to Article 2 shall be provided in a font size which is not smaller than the minimum font size as required in accordance with Article 13(2) of Regulation (EU) No 1169/2011.
2. Without prejudice to paragraph 1, where the country of origin or place of provenance of a food is given with words, the information provided pursuant to Article 2 shall appear in the same field of vision as the indication of the country of origin or place of provenance of the food and by using a font size which has an x-height of at least 75% of the x-height of the indication of the country of origin or place of provenance of the food.
3. Without prejudice to paragraph 1, where the country of origin or place of provenance of a food is given by means of non-scriptural form, the information provided pursuant to Article 2 shall appear in the same field of vision as the indication of the country of origin or place of provenance of the food.”
- Article 13(2) of Regulation (EU) No 1169/2011: “Without prejudice to specific Union provisions applicable to particular foods, when appearing on the package or on the label attached thereto, the mandatory particulars listed in Article 9(1) shall be printed on the package or on the label in such a way as to ensure clear legibility, in characters using a font size where the x-height, as defined in Annex IV, is equal to or greater than 1,2 mm.”

According to Article 9 of Regulation (EU) No 1169/2011, the country of origin or place of provenance of the primary ingredient must be indicated with words and numbers. It can additionally be expressed by means of pictograms or symbols. This information **must** be easily visible, clearly legible and where appropriate indelible, in line with the general requirements laid down in the basic act (Article 13 of Regulation (EU) No 1169/2011).

Furthermore, the information regarding the country of origin/place of provenance of the primary ingredient **must** be given according to the specific presentation requirements laid down in the Implementing Regulation:

1. Font size

- Where the country of origin or place of provenance of the food is given with words, the information regarding the country of origin/place of provenance of the primary ingredient **must** be given using a font size which has an x-height of at least 75% of the x-height of the indication of the country of origin or place of provenance of the food. In any case, the x-letter height **cannot**

⁸ Doubts by some within the industry exist on the legality of the presentation requirements foreseen by Implementing Regulation 2018/775, as these go beyond those prescribed by Regulation (EU) No 1169/2011.

be smaller than 1,2 mm, as the Implementing Regulation states that the font size cannot be smaller than that required by Article 13(2) of Regulation (EU) No 1169/2011 (*illustration of the “x-letter height” is provided below*);

- Where the country of origin or place of provenance of the food is given by means other than words (e.g. flags, pictures, symbols etc), the information regarding the origin/provenance of the primary ingredient **must** be given in a x-letter height which is not smaller than 1,2 mm, as the Implementing Regulation states that the font size cannot be smaller than that required by Article 13(2) of Regulation (EU) No 1169/2011 (*illustration of the “x-letter height” is provided below*).

Interpretation Q&A

- 1. As regards the presentation of the information regarding the country of origin/place of provenance of the primary ingredient, can the limit of 0,9 mm for small packs (<80cm²), as per Article 13(3) of Regulation (EU) 1169/2011, be used?**

Article 13(3) of Regulation (EU) No 1169/2011 provides the possibility to use a smaller font-size (i.e. a font-size whose x-height is equal to or greater than 0,9 mm) in case of packaging or containers the largest surface of which has an area of less than 80 cm². Implementing Regulation No 2018/775 does not refer to Article 13(3), but it only states that the information must be provided “in a font size which is not smaller than the minimum font size as required in accordance with Article 13(2) of Regulation (EU) No 1169/2011”. Notwithstanding this, it is the understanding of PFP, FoodDrinkEurope and EuroCommerce that the exemption to the general rule foreseen by Article 13(3) also applies to the indications of the country of origin or of the place of provenance provided for in accordance with Implementing Regulation 2018/775, the same manner as it applies to all mandatory particulars (e.g. allergens, other origin indications foreseen by Article 26).



Legend	
1	Ascender line
2	Cap line
3	Mean line
4	Baseline
5	Descender line
6	x-height
7	Font size

The x-height is provided in line 6.

2. Placement of the information

- The information regarding the origin/provenance of the primary ingredient **must** appear in the same field of vision⁹ as the indication of the country of origin or place of provenance of the food.

Interpretation Q&A

1. Can official acronyms be used to indicate countries (“BE”, “NL”, etc.)?

It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that it is possible to use acronyms to indicate countries (“BE”, “NL”, ...), provided that they are easily understood by consumers in the relevant market(s), in line with Article 7 of Regulation, which requires food information to be accurate, clear and easy to understand for the consumer. A case-by-case assessment is needed to ascertain if an acronym is well known and understood in the country(ies) where the food is intended to be marketed. Acronyms that could be used are for instance the official acronyms specified under ISO 3166 Standard for country names. Acronyms indicating the geographical area set by international agreements could also be used.

⁹ The notion of “field of vision” is defined by Article 2(2)(k) of Regulation (EU) No 1169/2011 as follows: “‘field of vision’ means all the surfaces of a package that can be read from a single viewing point”.

2. When the food includes an origin indication which is repeated on different places on the package, should the indication of the country of origin/place of provenance of the primary ingredient be given every time the origin indication is labelled on the package?

It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that it is not necessary to repeat the indication of the country of origin/place of provenance of the primary ingredient every time the origin indication is labelled on the package, although this should not prevent a food business operator from doing so voluntarily at its own discretion or to consider other solutions (e.g. asterisks).

3. In case of a food bearing an origin indication pursuant to the application of Article 26(2)(a), according to the Implementing Regulation, Article 26(3) applies. Which origin indication should be considered when applying the presentation requirements: the actual origin of the food given pursuant to Article 26(2)(a), or the reference to a geographical place which triggered the application of Article 26(2)(a)?

It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that the indication of the actual origin of the food which has been given pursuant to Article 26(2)(a) is that which has to be taken into account to determine the appropriate presentation of the information concerning the origin of the primary ingredient.

It is important to clarify that the presentation requirements prescribed by Implementing Regulation 2018/775 apply exclusively to the indications of the country of origin or the place of provenance of the primary ingredient of the food, given pursuant to Article 26(3) of Regulation (EU) No 1169/2011. So, for instance, the provisions of the Implementing Regulation regarding font size do not apply to the indications of the country of origin or place of provenance of the food, given to comply with Article 26(2) of Regulation (EU) No 1169/2011.

ARTICLE 4: ENTRY INTO FORCE, DATE OF APPLICATION AND TRANSITIONAL MEASURES

Article 4 of the Implementing Regulation sets out the modalities regarding the entry into force, transitional measures and the date of application.

Relevant provisions:

- Recital (15): “[...] An appropriate transitional period should be established for the application of this Regulation, in accordance with Article 47 of Regulation (EU) No 1169/2011, which requires that any new food information measures should apply as from 1 April in any calendar year [...].”
- Article 4: “This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Union.
It shall apply from 1 April 2020.
Foods placed on the market or labelled prior to the date of application of this Regulation may be marketed until the stocks are exhausted.
This Regulation shall be binding in its entirety and directly applicable in all Member States.”

The Implementing Regulation will apply from 1 April 2020. Foods which were placed on the market or labelled prior to this date can be marketed until stocks are exhausted.

V. Interpretation questions related to the definition of “primary ingredient”

The “primary ingredient” is defined by Article 2(2)(q) of Regulation (EU) No 1169/2011 as *“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.”*

Interpretation Q&A

1. Is it possible to have more than one primary ingredient of a food?

It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that, concerning the first part of the definition (“an ingredient or ingredients of a food that represent more than 50% of that food”), only one ingredient per food can represent more than 50% of the food. On the contrary, more than one ingredient can be associated with the name of the food by the consumer, meaning that, when the second part of the definition is applied (“an ingredient or ingredients of a food [...] which are usually associated with the name of the food by the consumer”), there may be more than one primary ingredient.

Example:

- “Butter biscuits”: the primary ingredient could be flour (more than 50% of the food) or butter (associated with the name of the food).

2. How should a food business operator choose which primary ingredient to indicate, particularly in cases where there are two or more primary ingredients?

According to the definition laid down in Regulation (EU) No 1169/2011, the primary ingredient is “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”.

It is the view of PFP, FoodDrinkEurope and EuroCommerce that it is up to the food business operator to verify whether there is(are) ingredient(s) which fall into the definition provided for by Regulation (EU) No 1169/2011:

- an ingredient that represent more than 50% of that food

OR

- an ingredient or ingredients which are usually associated with the name of the food by the consumer.

In situations where there are different food components which could fall under the definition of primary ingredient, it is up to the food business operator to decide which primary ingredient to indicate on a case-by-case basis, looking both at technical feasibility to provide the country of origin/place of provenance information and at consumers’ expectations (i.e. whether the provision of the origin/provenance indication for that particular ingredient is likely to substantially affect consumers’ purchasing decisions; whether the absence of the origin indication would be misleading

for consumers). Food business operators remain free to provide the country of origin / place of provenance for more than one primary ingredient, particularly when there are different ingredients equally characterising the food.

3. Concerning the second part of the definition (“an ingredient or ingredients of a food [...] which are usually associated with the name of the food by the consumer”), how should this(these) ingredient(s) be identified?

In order to identify the ingredient or ingredients of a food which is/are usually associated with the name of the food by the consumer, a case-by-case assessment should be carried out by the food business operator. One possible criterion would be to assess whether the provision of the country of origin/place of provenance indication for that particular ingredient is likely to substantially affect consumers’ purchasing decisions.

Example:

- “Paprika chips” (with a German flag): the primary ingredient would be potatoes. Paprika (or any other flavour) is not to be regarded as the primary ingredient of the food, also considering that consumers are not likely to make their purchasing decision based on the origin of paprika.

4. Concerning the first part of the definition (“an ingredient or ingredients of a food that represent more than 50% of that food”), how should the 50% threshold be calculated?

As a general rule, the 50 % threshold should refer to the quantity of the ingredient as recorded at the time of its use in the manufacturing of the food, in line with the method used to determine the order in the list of ingredients (Article 18 of Regulation (EU) No 1169/2011). For specific cases (e.g. dehydrated and concentrated foods, foods that have lost moisture, volatile ingredients), a case-by-case approach could be taken in order to address the peculiarities of each sector.

5. What is the relation with the quantitative ingredients declaration (QUID), i.e. is the indication of the country of origin or place of provenance required for an ingredient whenever a QUID is given for that ingredient?

The definition of “primary ingredient” refers to the quantitative ingredient’s declaration (QUID): *“‘primary ingredient’ means 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.”*

It is the understanding of PFP, FoodDrinkEurope and EuroCommerce that this reference to the QUID should not be interpreted as meaning that an origin/provenance indication should be required for all ingredients for which a QUID declaration is required. In other words, the trap of ‘reverse logic’ should be avoided: it is not because ingredients are ‘QUIDed’ in accordance with Art.22(1) of Regulation (EU) No 1169/2011 that origin labelling will by default become mandatory for these ‘QUIDed’ ingredients (see examples below). Only in the case of ingredients that represent more than 50% of that food or that are usually associated with the name of the food by the consumer, origin labelling for such ingredients might become mandatory, where the country of origin or the place of provenance of the food is indicated (and it is different to that of these ingredients).

For instance, ingredients that are emphasised through words, pictures or graphics and for which a

QUID declaration may be required, are not automatically primary ingredients unless they form more than 50% of the food or are usually associated with the name of the food by the consumer.

- Example of an edible Ice: Hazelnut dairy ice cream with cherry sauce and chocolate pieces

Although QUID could be provided for 'hazelnut', 'cherry', and 'chocolate', this voluntary extension of the name of the food should **not** automatically trigger mandatory origin labelling of these ingredients in case where the country of origin or place of provenance of the food is given and this is different from that of those ingredients.

- Example of a ready meal kits consisting of multiple components, where the food business operators has voluntarily decided to provide a QUID for 15 ingredients:

Rice (71%), Curry paste (21%): Sunflower oil, kaffir lime leaf (5.2%), spices (galangal (Thai ginger)), garlic powder (2.4%), cayenne pepper (2.3%), ginger (2%), rice flour, lemongrass (1.6%), lemon juice powder, shrimp powder, shallot onion powder, Thai spice (7%): Sugar, salt, kaffir lime leaf (9.7%), spices (cumin), garlic powder (4.5%), cayenne pepper (4.3%), ginger (3.7%), rice flour, lemongrass (3%), lemon juice powder, galangal (Thai ginger) (2.2%), shrimp powder, shallot onion powder, Chili (2%).

In cases like the one above, where the operator has voluntarily provided QUID for several ingredients, it is not necessary to provide the origin indication for all those ingredients, in cases where the country of origin or the place of provenance of the food is given and this is different to that of those ingredients.

- Example of milk chocolate with raisins and honey and almond nougat (10%)

Ingredients: Sugar, whole milk powder, cocoa butter, raisins (12%), cocoa mass, honey (3%), milk fat, almonds (1.6%), emulsifier: soya lecithin, egg white, flavouring (vanillin).
Milk chocolate contains: Cocoa solids 28% minimum. Milk solids 14% minimum.

Although QUID could be provided for 'raisins', 'honey', and 'almond nougat', this voluntary extension of the name of the food should **not** automatically trigger mandatory origin labelling of these ingredients in case where the country of origin or place of provenance of the food is given and this is different from that of those ingredients.

6. In the case where the primary ingredient is a compound ingredient, what should be indicated, the country of origin or place of provenance of the compound ingredient or of its individual ingredients?

According to Article 2(2)(h) of Regulation (EU) No 1169/2011, a "compound ingredient" means an ingredient that is itself the product of more than one ingredient". Furthermore, according to this Regulation, the quantitative ingredient declaration, where required, can be provided for the compound ingredient. Also in light of this, it is the understanding of PFP, FoodDrinkEurope and EuroCommerce that, in the case where the primary ingredient is a compound ingredient, the food business operator can decide, on a case-by-case basis, whether to provide the indication of the country of origin of the compound ingredient OR the country of origin/place of provenance of one or more of its ingredients, taking into account both consumers' expectations/understanding and technical feasibility.

Example:

- Cookies with cream filling: cream filling is a compound ingredient. The food business operator can decide whether to provide the origin of the cream, or that of its individual ingredients (e.g. eggs, sugar...)

7. Can water be considered the primary ingredient of a food?

Where a food is specifically made with water that confers particular characteristics to it, water is to be regarded as the primary ingredient of the food. Foods specifically made with water that confers particular characteristics to the food include for instance the case of foods made with natural mineral water or spring water as defined by Directive 2009/54/EC. This is also the case for beers in which water represents more than 50% of the food conferring specific organoleptic properties. In cases such as those above, the country of origin/place of provenance of the water should only be given when this is different from the declared country of origin/place of provenance of the food, according to Article 26(3) of Regulation (EU) No 1169/2011.
