

## Annex 2: Disclosed documents by request GESTDEM 2017/3783

**Projet de décret n°        du**  
**relatif à l'indication de l'origine du lait et des viandes utilisées en tant qu'ingrédient**

NOR : AGR

*Publics concernés : consommateurs, professionnels de l'agroalimentaire, distributeurs de produits agricoles ou alimentaires , directions départementales de protection des populations ;*

*Objet : indication obligatoire de l'origine des viandes utilisées en tant qu'ingrédient, du lait et du lait utilisé comme ingrédient dans les produits laitiers ;*

*Entrée en vigueur : le texte entre en vigueur le troisième mois suivant sa publication ;*

*Notice : le présent décret fixe les modalités d'application de l'indication de l'origine prévue aux articles L. 112-11 et L. 112-12 du code de la consommation applicables jusqu'au 31 décembre 2018. Il rend obligatoire l'indication de l'origine du lait ainsi que du lait et des viandes utilisées en tant qu'ingrédients dans des denrées alimentaires préemballées. Il vise à répondre à une forte demande des consommateurs d'assurer une meilleure lisibilité de l'origine de ces ingrédients dans les produits qu'ils consomment. Il prévoit la communication d'un rapport d'évaluation transmis à la Commission européenne, sur la base duquel pourra être envisagée la pérennisation du dispositif ;*

*Références : le texte peut être consulté sur le site Légifrance (<http://www.legifrance.gouv.fr>).*

**Le Premier ministre,**

Sur le rapport du ministre de l'agriculture, de l'agroalimentaire et de la forêt, porte-parole du Gouvernement, et du ministre de l'économie, de l'industrie et du numérique,

Vu le règlement (CE) n° 1760/2000 du Parlement européen et du Conseil du 17 juillet 2000 modifié établissant un système d'identification et d'enregistrement des bovins et concernant l'étiquetage de la viande bovine et des produits à base de viande bovine, et abrogeant le règlement (CE) n°820/97 du Conseil ;

Vu le règlement (UE) n° 1169/2011 du Parlement européen et du Conseil du 25 octobre 2011 modifié concernant l'information des consommateurs sur les denrées alimentaires, modifiant les règlements (CE) n° 1924/2006 et (CE) n° 1925/2006 du Parlement européen et du Conseil et abrogeant la directive 87/250/CEE de la Commission, la directive 90/496/CEE du Conseil, la directive 1999/10/CE de la Commission, la directive 2000/13/CE du Parlement européen et du Conseil, les directives 2002/67/CE et 2008/5/CE de la Commission et le règlement (CE) n° 608/2004 de la Commission ;

Vu le règlement d'exécution (UE) n° 1337/2013 de la Commission du 13 décembre 2013 portant modalités d'application du règlement (UE) n° 1169/2011 du Parlement européen et du

Conseil en ce qui concerne l'indication du pays d'origine ou du lieu de provenance des viandes fraîches, réfrigérées et congelées des animaux des espèces porcine, ovine, caprine et des volailles ;

Vu le code de la consommation, notamment ses articles L. 112-11 et L. 112-12 ;

Vu le code pénal, notamment son article R. 610-1 ;

Vu la notification n° XX du XX adressée à la Commission européenne en application de l'article 45 du règlement (UE) n° 1169/2011 du Parlement européen et du Conseil du 25 octobre 2011 ;

Le Conseil d'Etat (section des finances) entendu,

### **Décrète :**

#### **Article 1<sup>er</sup>**

Les dispositions du présent décret sont applicables aux denrées alimentaires préemballées au sens de l'article 2 du règlement n° 1169/2011 destinées à la consommation humaine contenant :

1° Du lait ;

2° En tant qu'ingrédient, du lait utilisé dans les produits laitiers mentionnés dans la liste figurant en annexe du présent décret ;

3° En tant qu'ingrédient utilisé dans un produit transformé, une ou plusieurs viandes mentionnées dans la liste figurant en annexe du présent décret.

Un arrêté des ministres chargés de l'agriculture et de la consommation fixe les pourcentages en poids des ingrédients contenus dans les denrées alimentaires préemballées en dessous desquels l'étiquetage de ces denrées n'est pas soumis aux dispositions du présent décret.

Ce pourcentage ne peut pas être supérieur à 50 %.

#### **Article 2**

I. L'indication de l'origine des viandes mentionnées à l'article 1<sup>er</sup> comprend, pour chaque catégorie de viande, les mentions suivantes :

1° « Pays de naissance : (nom du pays de naissance des animaux) » ;

2° « Pays d'engraissement : (nom du pays où a eu lieu l'engraissement des animaux) » ;

3° « Pays d'abattage : (nom du pays où a eu lieu l'abattage des animaux) ».

II. Par dérogation au I du présent article, lorsqu'une catégorie de viande provient d'animaux nés, détenus et abattus dans le même pays, la mention de l'origine peut apparaître sous la forme « Origine : (nom du pays) ».

### **Article 3**

I. L'indication de l'origine du lait ou du lait utilisé en tant qu'ingrédient dans les produits laitiers mentionnés à l'article 1<sup>er</sup> comprend les mentions suivantes :

- 1° « Pays de collecte : (nom du pays dans lequel a été collecté le lait) » ;
- 2° « Pays de conditionnement : (nom du pays dans lequel a été conditionné le lait) » ;
- 3° « Pays de transformation : (nom du pays dans lequel a été transformé le lait) ».

II. Par dérogation au I du présent article, lorsque le lait ou le lait utilisé en tant qu'ingrédient dans les produits laitiers mentionnés à l'article 1er a été collecté, conditionné et transformé dans le même pays, la mention de l'origine peut apparaître sous la forme « Origine : (nom du pays) ».

### **Article 4**

Lorsque les étapes mentionnées aux articles 2 et 3 du présent décret sont réalisées sur le territoire de plusieurs Etats membres de l'Union européenne, la mention « UE » peut être utilisée en lieu et place du nom des pays pour désigner la localisation des étapes concernées.

Lorsque les étapes mentionnées aux articles 2 et 3 du présent décret sont réalisées sur le territoire de plusieurs pays situés à l'extérieur de l'Union Européenne, la mention « Hors UE » peut être utilisée en lieu et place du nom du ou des pays pour désigner la localisation des étapes concernées.

### **Article 5**

Les produits légalement fabriqués ou commercialisés dans un autre Etat membre de l'Union européenne ou en Turquie, ou légalement fabriqués dans un autre Etat partie à l'accord sur l'Espace économique européen ne sont pas soumis aux dispositions du présent décret.

### **Article 6**

Est puni des amendes prévues par les contraventions de la 3ème classe le fait de :

- 1° Mettre en vente, vendre ou distribuer à titre gratuit des denrées alimentaires préemballées contenant du lait ou du lait utilisé en tant qu'ingrédient dans les produits laitiers mentionnés dans la liste figurant en annexe du présent décret dont l'indication de l'origine n'est pas portée à la connaissance du consommateur ;
- 2° Mettre en vente, vendre ou distribuer à titre gratuit des produits transformés préemballés contenant en tant qu'ingrédient une ou plusieurs viandes mentionnées dans la liste figurant en annexe du présent décret dont l'indication de l'origine n'est pas portée à la connaissance du consommateur ;
- 3° Ne pas respecter les prescriptions de l'article 7 du présent décret.

### **Article 7**

Les opérateurs mettent en place un système de traçabilité permettant de garantir l'information de l'origine du lait, du lait utilisé en tant qu'ingrédient ou des viandes utilisées en tant qu'ingrédient.

Ce système s'appuie sur la mise en place de lots homogènes sur l'origine des viandes et du lait et sur un système d'enregistrement de ces lots entrants et sortants dans la fabrication des produits transformés.

Un arrêté des ministres chargés de la consommation et de l'agriculture précise, en tant que de besoin, les modalités de mise en œuvre de ce système de traçabilité.

### **Article 8**

Les dispositions du présent décret sont applicables jusqu'au 31 décembre 2018. Les ministres chargés de l'agriculture et de la consommation établissent un rapport sur leur application.

Ce rapport est transmis à la Commission européenne le 30 septembre 2018 au plus tard.

### **Article 9**

Les produits mentionnés à l'article 1er qui ne répondent pas aux dispositions du présent décret, légalement fabriqués ou commercialisés avant son entrée en vigueur, peuvent être mis en vente, vendus ou distribués à titre gratuit jusqu'à épuisement des stocks et au plus tard le 1<sup>er</sup> janvier 2017.

### **Article 10**

Le présent décret entre en vigueur le premier jour du troisième mois suivant celui de sa publication au *Journal officiel* de la République française.

### **Article 11**

Le garde des sceaux, ministre de la justice, le ministre de l'agriculture, de l'agroalimentaire et de la forêt, porte-parole du Gouvernement et la secrétaire d'État chargée du commerce, de l'artisanat, de la consommation et de l'économie sociale et solidaire sont chargés, chacun en ce qui le concerne, de l'exécution du présent décret, qui sera publié au *Journal officiel* de la République française.

Fait le

Par le Premier ministre :

Le ministre de l'agriculture, de  
l'agroalimentaire et de la forêt,  
porte-parole du Gouvernement

Stéphane LE FOLL

Le garde des sceaux, ministre de la justice,

Jean-Jacques URVOAS

Le ministre de l'économie, de l'industrie  
et du numérique,

Emmanuel MACRON

La secrétaire d'État chargée du commerce, de l'artisanat,  
de la consommation et de l'économie sociale et solidaire

Martine PINVILLE

## ANNEXE

### I. - Liste des viandes mentionnées à l'article 1er

Viandes des animaux de l'espèce bovine,

Viandes des animaux de l'espèce porcine

Viandes des animaux des espèces ovine et caprine

Viandes des volailles

### II. - Liste des produits laitiers mentionnés à l'article 1er

Lait et crème de lait, non concentrés ni additionnés de sucre ou d'autres édulcorants

Lait et crème de lait, concentrés ou additionnés de sucre ou d'autres édulcorants

Babeurre, lait et crème caillés, yoghourt, képhir et autres laits et crèmes fermentés ou acidifiés, même concentrés ou additionnés de sucre ou d'autres édulcorants ou aromatisés ou additionnés de fruits ou de cacao

Lactosérum, même concentré ou additionné de sucre ou d'autres édulcorants; produits consistant en composants naturels du lait, même additionnés de sucre ou d'autres édulcorants, non dénommés ni compris ailleurs

Beurre et autres matières grasses provenant du lait; pâtes à tartiner laitières

Fromages et caillebotte

Paris, le 11 mars 2016

## NOTE DES AUTORITÉS FRANÇAISES A LA COMMISSION EUROPÉENNE

DG SANTE

**Objet : notification au titre de l'article 45 du règlement (UE) n°1169/2011 concernant l'information des consommateurs sur les denrées alimentaires.**

**P. J. : projet de décret relatif à la mise en place en France d'une indication obligatoire de l'origine du lait et des viandes utilisées en tant qu'ingrédient jusqu'au 31 décembre 2018**

Les autorités françaises souhaitent compléter la notification initiale du 16 février 2016 sous la référence 2016-121222 (AGRAP-RP 0223/16 – 15/02/16). Elles transmettent ainsi à la Commission au titre de l'article 45 du règlement (UE) n°1169/2011 du Parlement européen et du Conseil du 25 octobre 2011 concernant l'information des consommateurs sur les denrées alimentaires une nouvelle version du projet de décret relatif à la mise en place en France de l'étiquetage obligatoire du lait et des viandes utilisées en tant qu'ingrédient dans les denrées alimentaires jusqu'au 31 décembre 2018.

Ce projet vise à répondre à plusieurs enjeux que la Commission a elle-même identifiés dans son rapport de 2013.

### **1. Contexte**

#### **Répondre à l'attente forte des consommateurs sur des produits de qualité :**

La demande des consommateurs en faveur d'un étiquetage de l'origine des viandes utilisées comme ingrédient est très forte (**90 % des consommateurs selon le rapport de la Commission**). Un sondage réalisé en 2013 par l'association de consommateurs française CLCV montrait également que 81 % des consommateurs souhaitaient connaître l'origine des principaux ingrédients des produits transformés.

Par ailleurs, la résolution du Parlement européen du 11 février 2015 précise que du fait des obligations sur l'indication de l'origine de la viande commercialisée seule, le consommateur attend une information similaire pour les viandes utilisées en tant qu'ingrédient dans les denrées alimentaires.



D'après Eurobaromètre spécial 410 "la politique agricole commune", mars 2014, 84% des européens, 86% dans le cas des français souhaitent pouvoir identifier l'origine du lait vendu en l'état ou sous forme de produits laitiers.

Par ailleurs, d'après le baromètre 2015 sur les français et l'alimentation réalisé par Opinion Way, près de 80% des personnes interrogées se déclarent prêtes à payer plus cher pour un produit régional ou pour un produit 100% français.

Il apparaît ainsi clairement que l'origine d'un produit ou de ses ingrédients constitue pour une majorité des consommateurs un élément intrinsèque de la qualité ce produit.

Ce lien se comprend au regard, par exemple, de la définition donnée par l'Organisation Internationale de Normalisation de la qualité : *"ensemble des propriétés et caractéristiques d'un service ou d'un produit qui lui confèrent l'aptitude à satisfaire des besoins exprimés ou implicites"*.

Dans les secteurs agricole et agro-alimentaire, la qualité d'un produit pourra donc concerner les garanties supplémentaires apportées concernant la sécurité sanitaire, le respect de normes environnementales ou d'hygiène ou la satisfaction des clients sur les caractéristiques des produits qu'ils consomment. Ce point est repris dans le rapport de la Commission de 2013 qui cite certaines raisons jugées légitimes, qui poussent les consommateurs à souhaiter connaître l'origine des produits qu'ils consomment (soutien de la production locale, caractéristiques du produit, préoccupations éthiques ou environnementales).

Ainsi, la connaissance de l'origine des produits alimentaires et de leurs ingrédients constitue un facteur essentiel dans la perception par les consommateurs de la qualité des aliments.

Les autorités françaises souhaitent répondre à cette attente.

#### **Une transparence et une traçabilité améliorées :**

L'obligation de mentionner l'origine de la viande et du lait en tant qu'ingrédient représente un progrès dans la transparence et la traçabilité tout au long de la chaîne d'approvisionnement alimentaire. De récents scandales tels que celui de la viande de cheval utilisée frauduleusement à la place de la viande bovine dans des lasagnes se sont traduits par une baisse de la consommation de 30% de ces produits d'après la firme d'études de marché IRI. Les règles plus strictes en matière de traçabilité permettraient aux autorités d'enquêter plus efficacement sur les cas de fraude alimentaire. Cette lutte plus efficace contre la fraude alimentaire permet de rétablir la confiance des consommateurs dont l'une des préoccupations majeures est l'influence de l'alimentation sur leur santé. Cette confiance du consommateur serait d'autant plus acquise ou facile à restaurer en cas de crise si ce dernier disposait de l'information sur l'origine des ingrédients. Il pourra ainsi être assuré que la chaîne de traçabilité n'est pas rompue.

#### **Un impact sur les coûts et les prix à moduler :**

L'augmentation des coûts qui serait engendrée par l'obligation d'un étiquetage du pays d'origine ne serait pas automatiquement répercutée sur les prix. En effet, alors que le rapport de la Commission estime que ces coûts supplémentaires pourraient se situer dans une fourchette allant de 15 % à 50 % pour la viande en tant qu'ingrédient, les résultats d'une étude menée par UFC QUE CHOISIR, après l'affaire de la viande de cheval, sur la répercussion de l'étiquetage de l'origine sur les prix, montre des conclusions fortement divergentes de celles de la Commission et un impact modéré sur les prix. Par exemple, l'étude montre qu'entre décembre 2012 et novembre 2013, le prix des produits portant une indication de l'origine de la viande de bœuf ont augmenté en moyenne de 0,68 %. Sur la même période, le reste des prix des produits des rayons non concernés par cet étiquetage a augmenté de

0,01 %, soit une différence de seulement 0,67 point. Sur le lait, la Commission reconnaît que le coût de l'étiquetage de l'origine du lait de consommation pourrait être modeste.

Il est par ailleurs proposé de laisser aux opérateurs la possibilité d'inscrire une origine simplifiée « UE » ou « hors UE » afin de disposer d'une alternative simplifiée à l'étiquetage de l'origine individuelle des pays où ont été réalisées les principales étapes de préparation du produit. Cette possibilité permettra d'identifier les coûts afférents aux différents scénarios établis dans le rapport de la Commission Européenne de 2013.

## **2. Proposition**

Les autorités françaises proposent de mettre en place l'obligation de l'étiquetage de l'origine pour ces 2 ingrédients jusqu'au 31 décembre 2018 afin d'informer les consommateurs sur l'origine du lait et des viandes utilisées en tant qu'ingrédients dans les produits transformés. Cette expérimentation vise notamment à étudier la faisabilité de la mise en place de cette information dans le secteur laitier et dans les principales filières de la viande. Elle permettra également d'apprécier le coût engendré pour les différents acteurs de ces filières et l'éventuelle répercussion sur le prix payé par le consommateur final et sur ses habitudes de consommation.

Dans cet objectif, un bilan sera réalisé sur son application et sera transmis à la Commission européenne au plus tard le 30 septembre 2018 afin de pouvoir échanger sur la faisabilité d'une extension au niveau national et européen.

**ASSESSMENT NOTE ON FRENCH NOTIFICATION WITH REFERENCE TO  
ARTICLE 45 OF REGULATION (EU) No 1169/2011 OF DRAFT DECREE ON THE  
ORIGIN INDICATION OF MILK AND MEAT USED AS AN INGREDIENT**

In the context of the notification procedure under Article 45 of Regulation (EU) No 1169/2011<sup>1</sup>, on 11 March 2016, the French authorities notified a draft Decree on the origin indication of milk, milk and meat used as an ingredient.

### **1. CONTENT OF THE DRAFT MEASURE**

The draft legislation requires the origin indication of milk, milk used as an ingredient in certain dairy products as well as of certain meats used as ingredient in processed foods. Furthermore, the draft measure fixes the modalities for the provision of this information.

In addition, it is specified in the text that the above-mentioned requirements do not apply for foods lawfully produced in another Member State of the European Union. The measure is proposed as experimental as thus limited in time until 31 December 2018. France commits to reporting, before the end of this period, to the Commission and the other Member States.

### **2. ADMISSIBILITY OF THE DRAFT MEASURE**

Regulation (EU) No 1169/2011 establishes the general principles, requirements and responsibilities governing food information, and in particular food labelling. In this regard, Article 9(1) of the Regulation lists all particulars that shall be provided on foods, in accordance with Articles 10 to 35 and subject to the exceptions contained therein.

Article 38(2) of the same Regulation allows Member States to adopt national measures concerning matters not specifically harmonised by this Regulation provided that they do not prohibit, impede or restrict the free movement of goods that are in conformity with this Regulation.

Article 39(1) states that, in addition to the mandatory particulars referred to in Article 9(1) and in Article 10, Member States may adopt measures requiring additional mandatory particulars for specific types or categories of foods, justified on grounds of at least one of the following:

- (a) the protection of public health;
- (b) the protection of consumers;
- (c) the prevention of fraud;
- (d) the protection of industrial and commercial property rights, indications of provenance, registered designations of origin and the prevention of unfair competition.

In addition, Article 39(2) of Regulation (EU) No 1169/2011 specifies that by means of paragraph 1, Member States may introduce measures concerning the mandatory indication of

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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, OJ L 304, 22.11.2011, p. 18.

the country of origin or place of provenance of foods only where there is a proven link between certain qualities of the food and its origin or provenance. When notifying such measures to the Commission, Member States shall provide evidence that the majority of consumers attach significant value to the provision of that information.

The procedure for the adoption of such national measures is laid down in Article 45 pursuant to which Member States which deem it necessary to adopt new food information legislation shall notify in advance the Commission and the other Member States of the measures envisaged and give the reasons justifying them.

Then, the assessment of those measures concerning non-harmonised national labelling provisions is carried out by the Commission in the light of the overall objective of the Regulation and in particular of its Article 39(1) and (2). Finally, additional national labelling requirements must be balanced with the functioning of the Internal Market and must not create disproportionate barriers to the free movement of goods.

The labelling obligations laid down in Articles 2 and 3 of the notified draft constitute additional mandatory particulars within the meaning of Article 39(1) and (2) of Regulation (EU) No 1169/2011 and are therefore, subject to assessment by the Commission in accordance with the above-mentioned provisions of that Regulation.

After a careful examination of the provisions of the draft measure and the justifications submitted by the French authorities, DG SANTE would like to share the following assessment.

### **3. ASSESSMENT OF THE DRAFT MEASURE**

#### **3.1. Justifications and analysis of the French authorities**

To support their measure, the French authorities provide evidence of consumer interest in the information related to the origin indication with regard to milk and meat used as an ingredient. In particular they invoke the Commission reports on the matter, as well as a consumer survey carried out by the French Consumer Association (CLCV). The latter shows that 81% of the French consumers wish to know the origin of the primary ingredients of the processed foods. In addition, according to the French barometer carried out in 2015 by Opinion Way, around 80% of the interviewees are ready to pay more for regional or 100% French product. Similar findings are observed in the Eurobarometer special 410 in relation to the provision of information on the country of origin of milk and milk in dairy products. Finally, the French authorities quote the Resolution of the European Parliament of 11 February 2015 calling the Commission to propose mandatory origin labelling for meat in processed foods.

In the light of the data presented above, the French authorities confirm that there is a clear interest of the French consumer in the origin information with regard to the milk and meat products. It is also mentioned that information on the origin of foods and their ingredients is a key factor in the consumer perception of food quality.

In addition, it is explained that the obligation to indicate the origin of meat and milk used as an ingredient is a big improvement of the transparency and traceability along the food chain. In this regard, the French authorities refer to the horse meat scandal of 2013 and maintain that stricter rules would have allowed the Member States to better investigate food fraud.

Moreover, the French authorities question the potential price increase of foods bearing origin labelling, as estimated in the Commission's report on origin indication of meat used as an ingredient of 2013. In this regard, they make reference to a survey carried out by the French UFC QUE CHOISIR association as a counter-argument, where the price increase due to the origin indication of beef meat used as an ingredient has been calculated as much less important. In addition, the French authorities stress that, in order to reduce the additional burden on food business operators, the notified measure allows to provide the required information at "EU"/"non- EU" level.

Lastly, it is explained that the notified draft has an experimental character and will be applicable only until 31/12/2018. This pilot project would allow studying the feasibility of such labelling requirement for the food categories in question as well as evaluating their impact on the food chain, price increase and the consumer behaviour.

### **3.2. Observations and analysis of DG SANTE**

#### **3.2.1. On the justifications**

DG SANTE notes that the French measure is proposed on the **following grounds** identified in Article 39(1) of the Regulation:

- protection of the consumers (in particular with regard to their right to be informed about the characteristics of foods of their choice);
- prevention of food fraud.

Furthermore, according to Article 39.2 of the Regulation, there should be a proven

- (a) **link between certain qualities of the foods concerned and their origin or provenance, and**
- (b) **evidence that the majority of consumers attach significant value to the provision of that information.**

Regarding the requirement related to the link between certain qualities of the foods covered by the notified draft and their origin, the French authorities state that knowledge of the origin of foods and their ingredients is an essential factor in consumer's perception of food quality. In this context, the French authorities refer to the ISO 9000 and ISO 8402 standards, which define the quality as: "the totality of features and characteristics of a product or service that bear on its ability to satisfy stated or implied needs" and "ability to set of inherent characteristics to fulfil requirements".

To justify evidence of significant consumer interest, the French authorities point to the Commission's studies issued on the matter as well to some national surveys.

In recent years, the Commission has adopted different reports regarding the need to introduce mandatory origin labelling for certain food categories. All of them confirm the strong consumer interest in this information. They also reveal that consumers currently buy meat with origin indication less often than they would have wished – because of price considerations. In other words, these reports clearly show that, in spite of the consumer interest for information on origin, consumers' overall willingness to pay for this information is questionable. This price-sensitivity is mainly reflected for origin labelling on meat used as an ingredient. In this regard it is observed that consumers would be interested in receiving the information – at the highest level of detail possible – if this information were to be offered without any price increase. However, the documented findings demonstrate that the price increase would be considerable in particular with regard to the meat used as an ingredient.

With regard to the survey carried out by the CLCV, the Commission observes that 99% of the interviewed consumers (1040 in total) consider important the information on food origin. It is also concluded that 71% of the respondents see in this information the tool to contribute to the economic development of the region or the country in question.

DG SANTE notes that a French consumer study has been cited, where the cost of origin labelling of meat in processed foods is estimated as much lower than the price increases identified in the Commission report. Nevertheless, the quoted study merely refers to beef products marketed on the French market. For beef, origin labelling is expected to have the lowest impact, notably because of already existing traceability systems imposed by EU legislation and relatively lower volumes of intra-EU trade in bovine live animals and beef compared to other species. It should also be mentioned that, in the case of France, there is a sufficient supply of domestic raw material for the production of processed beef products. In addition, the price increase indicated in the Commission report refers to the production cost, and not to the final product price, as is the case in the French study. Finally, another important element which excludes an objective comparison of the findings in question is the fact that the French study examines the origin indications provided on a voluntary basis. The estimations of price increases for voluntary schemes are less significant as it is reasonably expected that they are put in place by food business operators for cases where origin indication is feasible based on their already existing business practices.

### **3.2.2. On the modalities provided by the notified draft**

DG SANTE notes that Article 2 of the notified text requires for meat used as an ingredient the provision of information on the place of birth, rearing and slaughter of the animal where the meat is coming from. Thus, this requirement is stricter than the Union rules set up in the Commission Implementing Regulation (EU) No 1337/2013<sup>2</sup> for the origin indication of certain fresh meats. According to the latter, only the country in which the animals were reared and slaughtered is required to be provided on the meat concerned. Therefore, the French rules cannot effectively be put in place on the basis of the existing EU-wide traceability systems.

DG SANTE observes that the draft labelling rules would only apply to food produced in France. Nevertheless, this does not exclude the possibility of a certain impact on the Internal Market. The draft measure has the potential to lead, de facto, to a re-nationalisation of the

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<sup>2</sup> Commission Implementing Regulation (EU) No 1337/2013 of 13 December 2013 laying down rules on the indication of the country of origin or place of provenance for fresh, chilled and frozen meat of swine, sheep, goats and poultry, OJ L 335, 14.12.2013, p. 19.

market for many agricultural commodities. Since French food producers will have to provide information on the country where the animal was born, reared and slaughtered, they could ultimately be led to mainly purchase raw materials coming from France where such information would be easily accessible. This is all the more true because suppliers outside France would not necessarily have the data on the country of birth for fresh meat and would not necessarily be interested in making the necessary arrangements only to access the French market. Finally, it is also likely that the French consumers will turn towards the national products when shopping. This is confirmed by the Opinion Way barometer quoted by the French authorities, according to which French consumers are ready to pay more for 100% French foods. In this context, it is worth noting that the Commission is aware of a considerable number of existing schemes and media activity in France, whereby French food is promoted already on a voluntary basis.

### **3.2.3. On the global approach**

DG SANTE recognises that consumers' sensitivity to the origin of the foods they eat has certainly grown over recent years. Consequently, origin has become of increasing relevance for businesses, and also policy makers. As a result, Regulation (EU) No 1169/2011 extends the mandatory origin indication to certain fresh meats. It also requires the Commission to assess the need to introduce mandatory origin labelling for certain food categories. The Commission reports based on the available studies and data concluded that, at EU level, voluntary origin labelling appears to be the most suitable solution, offering the possibility for consumers to select foods with a certain origin if they are willing to, without imposing additional burden and costs on all food business operators and authorities.

Having said that, it should be reminded that the Regulation allows the Member States to adopt mandatory origin labelling at national level, if the conditions mentioned under point 2 are met.

The French authorities provide data demonstrating strong consumer interest in the information on food origin. This is also confirmed by the recent developments in the European Parliament, which, on 11<sup>th</sup> May 2016, adopted a Resolution calling the Commission to propose appropriate legislation on the mandatory origin indication for meat and milk products. As a reminder, a similar Resolution (on country of origin labelling for meat in processed food) has been adopted in 2015. In addition, the French authorities emphasised the experimental character of the notified text which could be used at EU level for further reflection. During the meeting of the Standing Committee on Plants, Animals, Food and Feed which took place on 12 April, the French delegation recognised the lack of data on elements such as consumer's willingness to pay, feasibility of the measures or their impact on the Internal Market. However, this could be considered in the framework of the report which the French authorities committed to produce at a later stage. During the discussion, some Member States expressed their support for the French measure or for the introduction of origin labelling on a mandatory basis at EU level, whilst others questioned the compatibility of the French measure with the applicable legal criteria.

DG SANTE acknowledges that a pilot project would be beneficial in terms of sourcing the practical and factual information on elements which are missing in various studies and surveys carried out in the recent years on the matter.

From the wider policy perspective, DG SANTE recognises that in a difficult situation for various agricultural sectors, in times of constraints by the embargo imposed by the Russian Federation and of increased global competition with food producers from emerging economies, a case can be made for innovative approaches to finding and testing new solutions. DG SANTE considers that the Commission's role in such circumstances should be to enable dialogue and provide space for reflection and analysis on how growth and competitiveness can be fostered while continuing to preserve the assets of the internal market, with its recognition both of producers and of consumers as important economic actors.

#### **4. Conclusion**

Given the fact that the issue of origin labelling is of main priority for the European consumer and taking into account the wider policy considerations outlined, as well as the limited and short time proposed for the pilot project, it can be envisaged not to oppose the notified draft measure.





EUROPEAN COMMISSION  
Secretariat-General  
Directorate E - Policy Co-ordination II  
The Director

Brussels, 6. 6. 2016  
SG/E/

NOTE IN REPLY TO AN INTER-SERVICE CONSULTATION

**Subject: Draft assessment note on French notification of a draft decree on the origin indication of milk and meat used as an ingredient  
ISC/2016/01701 (internal reference: Ares(2016)2394263, DG SANTE, deadline: 06 June 2016**

The SG gives a positive opinion subject to the following comments:

The SG notes that the draft measure could potentially have consequences in terms of the level playing field for European farmers and the food industry in the single market.

While it should be acknowledged that the current context for farmers in France is particularly challenging, the justification provided by France is not very substantial. The "proven" [i.e. objective] link between qualities of the food and its origin" needs to be better explained given that it is based on consumer surveys and arguments which the Commission has rejected in the past (e.g. on "traceability").

It is also worth recalling that it was the long debate in the past about extending the mandatory indication of origin of many unprocessed foods to processed foods that led to the acceptance of the compromise on national rules for mandatory indication of origin provided that there is "a proven link between qualities of the food and its origin", subject to a compliance check by the Commission following a mandatory notification – and given that voluntary origin labelling is always possible. The Commission has until now<sup>1</sup> been sceptical of mandatory origin labelling, because, while it may contribute to quality, it does not seem to prevent fraud or contribute to food safety, and is difficult to enforce.

On the draft assessment note, The SG has the following comments:

Duration of standstill period: according to Article 45(1) of the Regulation on food information for consumers France had to notify the Commission and Member States, and Article 45(3) implies this is a single notification. While France notified the Commission on 11 March, it only notified the Member States on 6 April which suggests that the three months standstill period only starts on 6 April and therefore runs until 6 July. This should be clarified in the draft assessment note.

<sup>1</sup> Most recently in Commission Communications COM(2015)205 and COM(2015)204, as well as in reply to the EP resolution voted in February 2015 (EP(2015)235).

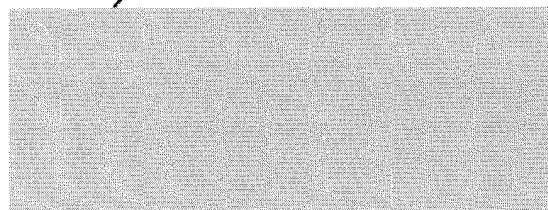
Practical repercussions of the measure: The draft assessment note, in section 3.2.2., should clarify that the protectionist effect is not necessarily caused by the "distrust" of French consumers vis-à-vis non-French animal-derived food ingredients. The main issue is the practicalities of the supply chain – the risk that the measure would mean that a switch to or between non-French suppliers would require (costly) changes to the food label, and that French food manufacturers can therefore be expected to limit themselves to French suppliers.

Risk of precedent harmful to the internal market for agricultural commodities: The draft assessment note should highlight more clearly that the French draft measure could serve as a precedent for similar measures in the food sector by other Member States. In this respect, the note should make reference to previous notifications (Hungary), ongoing notifications (Lithuania) and similar measures just recently announced by Italy. The draft assessment note should acknowledge the risk of a knock-on to similar measures.

Reference to increased global competition: The draft assessment note, in section 3.2.3, refers to "increase[ing] global competition with food producers from emerging economies" as "making a case for new solutions". However, regarding milk and milk-based ingredients, as well as meat and meat-based ingredients, European food safety standards (and in particular the concept of "positive lists") have made it in practice rather difficult for emerging economies to access the EU market: for example, for the whole of China, currently only 11 dairy plants are allowed to export to the EU and only 17 plants are allowed to export poultry meat and meat products to the EU. Imports of Chinese pork and beef (products) are prohibited altogether.<sup>2</sup> The situation is similar for most other "emerging economies". In view of this, the wording should be revised and softened.

Reference to the upcoming EU rules on voluntary origin labelling: The draft assessment note should commit to adopting the implementing act specifying rules on *voluntary* origin labelling without delay. This implementing act is a legal obligation and overdue. In view of the political sensitivity of the topic, the initiative is rightly identified as a "major initiative" in Agenda planning.<sup>3</sup> The SG welcomes the fact that DG SANTE has just re-convened the inter-service group (which last met in June 2013) to discuss a draft text, so that this dossier can move ahead quickly.

The SG is ready to assist DG SANTE in incorporating these points into the draft assessment note.

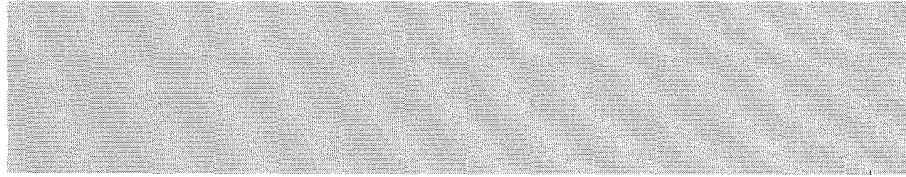


James Morrison

Contact: [redacted] (ext.: [redacted])

Copies: [redacted]

<sup>2</sup> [https://webgate.ec.europa.eu/sanco/traces/output/non\\_eu\\_listsPerCountry\\_en.htm#](https://webgate.ec.europa.eu/sanco/traces/output/non_eu_listsPerCountry_en.htm#)  
<sup>3</sup> AP 2015/SANTE/385. The impact assessment has already been approved by the (then) impact assessment board in its opinion of 6 September 2013.



[REDACTED] (SG)

Mr L. Delvaux (CAB-JUNCKER)  
Ms A. Richard (CAB-TIMMERMANS)  
Ms Ch. Olsson Altansunar (CAB-KATAINEN)

5.



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate D. Direct support  
**D.2. Greening, cross-compliance and POSEI**

Brussels,  
agri.dg2.d.2(2016)3132251

**THE REPLY OF DG AGRI**  
**AVAILABLE IN DECIDE CIS MODULE**

Responsible DG, ISC reference number:	CIS SANTE - 2394263
Title of consultation:	ASSESSMENT NOTE ON FRENCH NOTIFICATION WITH REFERENCE TO ARTICLE 45 OF REGULATION (EU) NO 1169/2011 OF DRAFT DECREE ON THE ORIGIN INDICATION OF MILK AND MEAT USED AS AN INGREDIENT
Deadline:	06/06/2016
Contact person, unit from DG AGRI:	[REDACTED]
Telephone:	[REDACTED]
Type of reply:	Favourable opinion provided the following comments and proposed modification are taken into account in the Commission assessment of the French notification
Authorised by (name, title):	<b>e-signed</b> <b>For Jerzy PLEWA absent</b> <b>Directeur General</b> <b>Joost KORTE</b> <b>Deputy Director general</b>

Comments of DG AGRI:

DG AGRI takes note of the opinion of the lead service for Regulation (EU) 1169/2011 on the French notification introducing compulsory origin labelling of milk, milk and meat used as an ingredient

The provisions on origin labelling have been reviewed at Union level with the entry into force of Regulation (EU) No 1169/2011 on food information to consumers. The basic principle is still that origin labelling remains voluntary for milk and dairy products as well as processed meat. In addition specific studies on origin labelling for meat and milk used as an ingredient have been carried out by the Commission with the conclusion that origin labelling should remain of a voluntary nature and not compulsory. This was as well the main conclusion of the 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 milk, milk used as an ingredient in dairy products and types of meat other than beef, swine, sheep, goat and poultry meat (COM (2015) 205 final).

Regulation (EU) No 1169/2011 allows Member States to adopt national measures on one of the specific grounds listed in Article 39(1). However, DG AGRI considers that the grounds proposed in the French decree, "protection of consumers" and "prevention of fraud", are not duly justified. It is also worth highlighting that – as required in Article 39(2) – there is no established link between the French origin and a particular quality attribute.

Furthermore, DG AGRI is of the view that the FR decree is not compatible with Regulation (EU) No 1337/2013 as regards the indication of the country of origin or place of provenance for fresh, chilled and frozen meat of swine, sheep, goats and poultry. The place of birth is not a requirement under Regulation (EU) No 1337/2013 for unprocessed meats while, following the French decree, it would become mandatory in processed products.

Therefore DG AGRI would like to refer to the importance of the final view of the Legal Service on the compatibility of the SANTE proposal with the legal framework.

Although DG AGRI acknowledges the political background of the French initiative and the difficulties which certain agricultural commodities are currently experiencing in the markets, it considers that the consequences on agricultural markets and the functioning of the single market are to be fully taken into account. It seems that the proposed approach – so-called "pilot project approach" – would *de facto* oblige food businesses in France to source relevant ingredients at national level, thus creating a distortion of competition by providing an outlet destination for less competitive national products to be used as ingredients. This would also slow down the necessary restructuring of the sector in France. The provisions of Article 4 of the draft decree providing the possibility to mark products processed in several Member States as "EU" does not prevent the market renationalising effect of the act as those products would be disadvantaged on the domestic market vis-à-vis others indicating "France" three times.

This "pilot project approach" could also trigger similar reactions outside France and lead to a renationalisation at much wider scale. Indeed, similar projects are planned by Lithuania, the Czech Republic and Italy but others will certainly follow (there are indications of similar moves in Portugal and Romania), leading to potentially severe consequences for the EU internal market.

Against this background, AGRI's favourable opinion is conditional to the removal in the French decree of the provisions of its article 6 imposing penalties. This would allow for a better reflection of the "experimental" nature of the proposal, while satisfying the political objectives it seeks to achieve.

## ANNEX

Regulation (EU) No 1169/2011 allows Member States to adopt national measures on grounds of protection of public health and protection of consumers, amongst others. Article 39(2) states that

*"Member States may introduce measures concerning the mandatory indication of the country of origin or place of provenance of foods only where there is a proven link between certain qualities of the food and its origin or provenance. When notifying such measures to the Commission, Member States shall provide evidence that the majority of consumers attach significant value to the provision of that information."*

DG AGRI considers that no proof is provided by the FR authorities on the existing objective link between the qualities of the food and its origin or provenance. So the essential requirement to apply the derogation provided in article 39 (2) is not fulfilled.

Furthermore Article 38(1) of Regulation No 1169/2011 specifically requires that

*"...Those national measures shall not give rise to obstacles to free movement of goods, including discrimination as regards foods from other Member States".*

In point 3.2.2 of its draft assessment, DG SANTE recognises that the FR draft presents "*the possibility of a certain impact on the internal market*" but does not provide any arguments according to which Article 38(1) would nevertheless be complied with.

The proposed approach will provide grounds for obstacles to the free movement of goods and discrimination for food from other Member states as it may have, at least potentially, restrictive effects on the import of food products. Indeed, within the internal market, the origin-marking requirement not only makes the marketing in a Member State of goods produced in other Member States in the sectors in question more difficult, it also has the effect of slowing down economic interpenetration in the European Union by handicapping the sale of goods produced as the result of a division of labour between Member States (Judgment in UNIC and Uni.co.pel, C-95/14, ECLI:EU:C:2015:492, paragraph 44).

Furthermore, because of its discriminatory nature, it could be inconsistent with our WTO obligations.

The proposal concerns "*national origin labelling*" but no justification is provided on the opportunity to consider providing more detailed information on origin in particular at regional or lower level.

The justification used with regard to fraud prevention is not substantiated. On the contrary, more details of administrative obligations will be required, more controls will be needed to ensure the respect of the law. However, the competitive advantage of cheaper products will continue to maintain the drive for profit and fraud. Compulsory origin labelling cannot be considered as a tool to prevent fraudulent practices. Fraud practices can be eliminated by appropriate enforcement of EU legislation which falls under the responsibility of MS.

### 1. Main reasons of concern:

- a. The required elements of Article 39 of Regulation (EU) No 1169/2011 are not fulfilled by the FR decree; in particular those in paragraph 2, namely that there is no established link

between French origin and a particular quality attribute. The quality of meat and milk as raw material for processed products depends first and foremost on genetic and feeding aspects of the animals, which is not guaranteed by the simple notion of the Member State where the food producing animals are kept.

Details on "quality" are also given in a specific part of this annex where more extensive legal analysis and comments are provided.

- b. The FR decree is not compatible with Regulation (EU) No 1337/2013 as regards the indication of the country of origin or place of provenance for fresh, chilled and frozen meat of swine, sheep, goats and poultry. The place of birth is not a requirement within Regulation (EU) No 1337/2013. Current EU traceability requirements for live animals do not provide information of birth for pigs, sheep, goats and poultry at the place of slaughter. Therefore the French proposal will impose additional burden to food business operators sourcing ingredients outside France where more detailed requirements will need to be developed and imposed.
- c. The requirement of Article 38(1) of Regulation (EU) 1169/2011 is not fulfilled. The French food processing industry would be restricted in sourcing raw materials from Member States other than France, as it would need to label its origin as non-French. Businesses located near borders deal with multiple origins and will be particularly impacted. It would create a burden for operators and their costs would significantly increase, in particular when applied to processed products, as it is the case for most dairy products. There is a wide variety of dairy products, with multiple dairy ingredients.

## 2. Further concerns:

- a. The FR decree is foreseen for an "experimental period" (pilot), but it is not clear what will happen after the end of the "experimental period". The argument on the temporary nature of the proposed draft is not consistent with the proposed penalties and on the compulsory nature of the measure on the entire French territory. The decree could be extended, and serve as a precedent for other Member States, which will be encouraged to introduce similar national measures. The Commission could find itself in a difficult situation to handle similar notifications in a different manner and it could have an impact on the Single Market.
- b. The decree would have consequences for operators who will have to adjust their product flows and/or change their product labels and make investments. This could raise the question of what will happen to the products/investments after the end of the experiment.
- c. The impact of such measures should be seriously analysed and an impact assessment should have been carried out, instead of opting for an "experiment". Furthermore a "pilot" should rather be voluntary, confined to some specific regions or parts of the country and no penalties should be imposed.
- d. Consumer information is guaranteed by voluntary labelling within Regulation (EU) No 1169/2011, and consumers today do have the option to buy a product for which detailed information on origin is given (also in France). Equally, those who do not wish to pay more for products with detailed information on origin should not be forced to do so.

In addition, concerning the argument given in point 3.2.3 of the SANTE assessment ("*DG SANTE recognises that in a difficult situation for various agricultural sectors, in times of constraints by the embargo imposed by the Russian Federation and of increased global competition with food producers from emerging economies, a case can be made for innovative approaches to finding and testing new solutions...*"), it is important to stress that market management falls under DG AGRI competence. Mandatory origin labelling will not help addressing the difficulties faced by certain market sectors. The French proposal will in no case constitute an adequate response to the difficult situation of the markets, which affects the whole EU, and for which specific tools exist within the CAP. This statement is particularly inappropriate as it seems to acknowledge that renationalising the markets could be a solution to the difficult situation described.

The discriminatory nature of the project will affect not only the domestic market but will also dent the promotion of EU voluntary quality schemes which are an important DG AGRI asset in negotiating international deals. The drive for a banalisation of the role of "origin" outside the well structured EU policy, will eventually undermine the credibility for the EU products at international level.

### **3. Considerations on "quality and origin"**

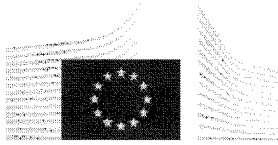
As far as origin as a "quality claim" is concerned, we would like to refer to the established case-law, which says that promoting agriculture products by means of linking product's quality with origin, needs to be done exclusively through the procedure foreseen in Regulation (EU) No 1151/2012 of the European Parliament and the Council on quality schemes for agricultural products and foodstuffs. In other words, the Court of Justice found Regulation (EU) No 1151/2012 to be exhaustive in nature, meaning that labels that promote agricultural products by referencing their origin and quality may only be issued through the PDO/PGI framework (Chiciak and Fol, C-129/97 and C-130/97, later confirmed in Budvar v. Ammersin, C-478/07).

The consideration behind this principle is based on the need to ensure freedom of movement of goods and a concern that multiple, national quality standards could effectively hamper the Common Market. There, the Court of Justice would point out that a scheme has, at least potentially, restrictive effects on the free movement of goods between Member States if it is set up in order to promote the distribution of agricultural products made in one Member State and for which the advertising message underlines the national origin of the relevant product (Commission v Germany, C-325/00, paragraph 23).

The fact that a scheme pursues a quality policy does not take it outside the scope of Article 34 of the Treaty. It is the effect of the scheme on trade that defined its compatibility (or not) with the Common Market (C-325/00, par 25).

Even a national scheme, which merely underlines the national origin of the product for advertising purposes, 'may encourage consumers to buy such labelled products, to the exclusion of imported ones', which is problematic under Article 34 TFEU (C-325/00, par. 23). The opinion of the Court was not different in case of the 'Buy Irish' campaign, which was designed to "achieve the substitution of domestic products for imported ones" and was thus found "liable to affect the volume of trade between Member States" (C-249/91, par. 25). All this need to be taken into account when assessing whether the proposed measures are compatible with Article 38(1) of Regulation (EU) N°1169/2011.





## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Director-General

Brussels, 01/06/2016

GROW/D3/ - Ares (2016)3182652

### ANNEXE A LA RÉPONSE DE LA DG GROW

DISPONIBLE SUR DECIDE

**Consultation interservices lancée par:** DG SANTE

**Référence:** consultation ISC/2016/01701 (référence interne : Ares(2016)2394263)

**Titre:** assessment note on French notification with reference to article 45 of regulation (eu) no 1169/2011 of draft decree on the origin indication of milk and meat used as an ingredient.

**Personne de contact dans la DG:** [REDACTED]



Avis négatif

### **Introduction**

DG GROW reviewed carefully the French draft Decree on the origin indication of milk, milk and meat used as an ingredient and the draft assessment made by DG SANTE. The measure manifestly lacks justification from a legal point of view, and would provoke detrimental effects to the Internal Market and the competitiveness of food business operators. For the reasons explained below, DG GROW issues a negative opinion for this ISC.

### **Lack of justification for the French measure**

According to Article 39 of the Food Information Regulation<sup>1</sup>, it is an obligation for the Member State to present a "proven link between certain qualities of the food and its origin or provenance". The draft Decree notified to the Commission does not give **any solid justification** on this particular point, although this is a fundamental precondition required by the Regulation.

Regarding this requirement the French authorities merely state that information on the origin of food is a key factor for the customer's perception of the food quality. In this context, the French authorities refer to the ISO 9000 and ISO 8402 standards, which define the quality as: "the totality of features and characteristics of a product or service that bears on its ability to satisfy stated or implied needs (...)". DG GROW cannot share

<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, OJ L 304, 22.11.2011, p. 18.

the opinion that the customer perception of the food quality falls under the scope of the term "certain qualities of the food". On the contrary this definition should imply certain quality characteristics to be identified for a specific food. This may include DNA characteristic of the animal concerned, organoleptic, sanitary, chemical qualities, etc. French authorities did not provide any solid evidence for the link between the origin or provenance of the concerned products, and any kind of specific qualities' characteristics. Similarly, French authorities present an **unsubstantiated link between origin marking and the prevention of food frauds**. French authorities refer to the horse meat scandal of 2013 and consider that stricter rules would have allowed the Member States to better investigate food frauds. On this point, the Commission stressed on several occasions, also in the media, that a case of deceptive labelling is different from a case of lack of indication of country of origin. The Commission has always defended the position that food frauds are prevented by the solid traceability system put in place within the EU borders. Thus the Commission cannot defend inconsistently the specific point of view of France on prevention of food frauds.

The same logic applies to the second justification put forward by France, namely the protection of the consumers. The indication of country of origin labelling remains possible on a voluntary basis. The absence of origin labelling on a given product does not entail a lack of protection of consumers' rights. Consumers remain free to choose products with origin labelling, if they wish so.

#### **Detrimental effects on the Internal Market and on the competitiveness of food business operators**

DG GROW would like to underline that according to Article 38(2) of the Food Information Regulation Member States are allowed to adopt national measures concerning matters not specifically harmonised by this Regulation, only if they do not prohibit, impede or restrict the free movement of goods.

On this point DG GROW agrees with the assessment of DG SANTE at paragraph 3.2.2 of the assessment note accompanying the French notification. Such an origin marking would indeed lead to a re-nationalisation of the marketing of certain agricultural commodities and processed products, due to discriminatory effects of the proposed legislation for the non-national food suppliers.

Additionally, as acknowledged by the above-mentioned report of the Commission of December 2013, mandatory origin labelling<sup>2</sup> *"would pose operational challenges and require radical adaptations in the food chain"*. Neither the beef market nor the milk products markets are closed national clusters. Both are subject to significant intra-EU trade. The presence of origin marking on all French products will create a prejudice against foreign products of food business operators acting on a European level.

We would like to remind that both in the report issued in December 2013 regarding meat ingredients and in the one of May 2015 regarding, among other products, milk and milk used as an ingredient, the Commission indicated the negative effects that mandatory country of origin labelling would entail if introduced at the EU level (increasing costs for operators, low willingness to pay of consumers, increasing administrative burden). We are of the opinion that the same conclusions are valid for assessing the feasibility of the introduction of country of origin labelling at national level.

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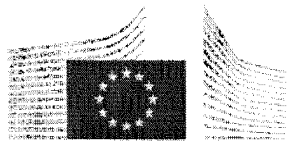
<sup>2</sup> Report COM (2013) 755 Final, page 14.

## **Conclusions**

The "difficult situation for various agricultural sectors, in times of constraints by the embargo imposed by the Russian Federation and the increased global competition with food producers from emerging economies", mentioned by DG SANTE, does not invalidate the above-mentioned facts. It is vital that the Commission does not encourage Member States to use experimental measures, try innovative approaches and test new solutions just to alleviate the temporary effects of market developments, as proposed by SANTE in the same document. This would be to the detriment of the Internal Market and of competitiveness of such important pillars of the EU economy as food business operators.

*(e-signed)*  
Lowri Evans

7.



EUROPEAN COMMISSION  
Competition DG

Director-General

Brussels, 6 June 2016

**NOTE FOR THE ATTENTION OF  
MR. PRATS MONNET - DG SANTE**

**RE: REPLY FROM DG COMP TO THE ISC LAUNCHED BY DG SANTE CIS-NET NR. 2016/01701**

Note signed by: MR. LADISLAV MIKO, DEPUTY DIRECTOR-GENERAL FOR FOOD SAFETY

Dated: 24 May 2016

Reference: Ares(2016)2394263

**deadline for reply:** 6 June 2016

**Title:** Inter-Service Consultation on the French notification of draft Decree on the origin indication of milk and meat used as ingredients.

- 
- Agreement
- Favourable opinion subject to account being taken of the following comments
- Negative opinion (see attached comments)

Contact: [redacted], [redacted] (DG COMP ETF)

Tel: [redacted], [redacted]

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**Comments:**

DG COMP has serious doubts about the compatibility of the proposed measure with the criteria of the Regulation and is concerned by the potential impact of such a measure on the functioning of the Internal Market. In the light of these concerns the fact that the measure is proposed for a temporary test period does not justify its adoption.

**DG COMP's arguments:**

1. Incompatibility with the legal criteria laid out in Articles 39 (1) and (2) of Regulation EC No 1169/2011:

Article 39 (1) allows Member States to adopt measures requiring additional mandatory information for specific types of categories of foods, justified on certain grounds. Article 39 (2)

specifies that the above may be done **only** where there is a **proven link between certain qualities of the food and its origin or provenance**.

France does not seem to have provided any evidence showing the link between the quality of the product and its origin: how does the production of the products concerned in France lead to certain specific qualities? The proposal seems essentially based on the assertion that French consumers would like to know the origin of the products: how is this creating a link between quality and origin as requested by the Regulation?

DG COMP notes that some Member States share the same concerns, based on the minutes of the Council's Special Committee on Agriculture (SCA) meetings and of the Standing Committee referred to in the note.

Based on the information available, DG COMP fails to see how the notified measure can be compatible with these legal criteria. The proposed interpretation of the legal requirements appear to risk paving the way for new requests from other Member States potentially fragmenting labelling regimes in the internal market further.

DG SANTE is invited to clarify further the consequences of this decision for past and future applications for country specific labelling provisions.

2. The measure raises concerns about discrimination against products from other Member States and seems incompatible with Article 38 of Regulation EC No 1169/2011:

Article 38 Regulation EC No 1169/2011 provides that, when assessing the measure proposed, the Commission must **balance it with the functioning of the Internal Market and must not create disproportionate barriers to the free movement of goods**. The proposed measure raises concerns about its impact on the EU Internal Market.

Indeed, DG COMP is concerned that the likely effect of the measure proposed by the French State risks being a reduction of imports into France for the reasons set out below.

The French State proposes to adopt the measure specifically for the dairy and meat sectors. However, the interest of consumers for more information is equally valid for other sectors, e.g. cereals used for biscuits or sugar used for sweets. There is a lack of coherence with the objectives of the Regulation if the measure is proposed specifically for these products and not for others. More precisely there are indications that the objective of the measure is extraneous to the objective of the Regulation.

In fact, the markets of these products happen to experience significant price drops and the French government presented the measure as part of a package of measures to address the crisis in the dairy and meat sectors (and not for information purposes in favour of the consumer)<sup>1</sup>.

French producers called for retailers and processors to give preference to national products (presented as "patriotisme économique").

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<sup>1</sup> "Enfin, Stéphane le Foll a pu à l'occasion de ce conseil redire la fermeté de la France à ce que des dispositions sur l'étiquetage de l'origine des produits transformés, plébiscités par les consommateurs européens voient le jour. Dans l'attente de dispositions partagées, le Ministre a transmis au Commissaire européen **un projet de décret car il entend bien avancer sur le plan national dans l'attente d'une décision communautaire.**"

<http://agriculture.gouv.fr/stephane-le-foll-demande-leurope-de-reagir-pour-sauver-lelevage>

In the beef sector, in June 2015 French farmers' unions FNSEA, JA and FNB called through a press release for labelling of meat of French origin to isolate the French market and allow it to reach a higher price through exclusive domestic imports: "Les producteurs attendent de leur part dès aujourd'hui une prise de position sur deux points prioritaires: [...] - **leur engagement ferme dans un processus immédiat de revalorisation des prix[...] et la mise en œuvre d'un ensemble d'actions-leviers (mise en avant de Viande de France, [...]), à même de la pérenniser**"<sup>2</sup>.

With regard to the milk sector, on 24 July 2015, after a meeting of the associations of operators in the milk supply chain, the French Minister of Agriculture reported on the agreement reached by these operators and stated that: "L'accord qui est passé, c'est de **favoriser la production française**, [...] on a clairement indiqué le fait que si on revalorisait le prix du lait français, chacun devait s'engager et c'est l'engagement qui a été pris, à **ne pas favoriser les importations de lait**, donc cet engagement est pris et c'est très important pour tenir l'objectif et la stratégie qui est la nôtre : revaloriser les prix et **favoriser la production française**"<sup>3</sup>. In the same direction, the FNSEA, French largest farmers' union, stated in a press release the same day together with the JA and the FNPL (other farmers' unions) that "La distribution s'est engagée à s'approvisionner 100% français dans ses rayons". Furthermore, the FNSEA stated recently: « un **décret sur l'obligation de mention d'origine du lait - produit et transformé en France** - pourrait permettre de mieux tenir les prix - en donnant le choix au consommateur. **C'est la seule voie pour éviter les importations, sans être accusé d'entrave à la libre circulation des produits** »<sup>4</sup>.

Against this background, the implementation of systematic labelling of the origin of products (in practice France vs other sources) risks facilitating the naming and shaming of importers of products from other Member States so as to ultimately restrict imports.

DG COMP is currently looking into agreements reached by retailers and producers. These agreements are legally independent from the measure proposed by the State. However, the measure of mandatory indication of origin proposed by the French State can reinforce the effects of such agreements as well as the effects of any other individual or collective initiative by operators to discriminate against imports.

DG COMP respectfully requests DG SANTE to assess the criteria under Article 38 of Regulation EC No 1169/2011, and notably to carry out the balancing exercise of the measure against the functioning of the internal market that is foreseen in that article.

The fact that the measure is proposed for a temporary test period does not appear to justify its adoption if the concerns expressed above are founded.

Johannes Laitenberger

Director-General

<sup>2</sup> <http://www.agri44.fr/V4/fnsea-ja-et-fnb-attendent-un-engagement-fort-de-la-part-des-industriels-en-reponse-a-la-detresse-des-eleveurs-actualite-numero-6201.php>

<sup>3</sup> <https://webtv.agriculture.gouv.fr/crise-dans-les-filieres-d-elevage-stephane-le-foll-rencontre-les-producteurs-de-lait-video-4595.html> (relevant quote as from minute 3:50)

<sup>4</sup> <http://www.lsa-conso.fr/xavier-beulin-fnsea-on-ne-voit-aucune-amelioration-pour-les-productions-agricoles,236361>



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9.

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**M Stéphane LE FOLL**

**Ministre de l'Agriculture, de l'Agroalimentaire et de la Forêt,  
Porte-parole du Gouvernement**

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78, rue de Varenne -75349 Paris 07 SP**

Bruxelles, 04 07 2016  
ARES(2016)

*Objet: Notification par la France, conformément à l'article 45 du règlement (UE) n° 1169/2011, d'un projet de décret relatif à l'indication de l'origine du lait et des viandes utilisées en tant qu'ingrédient*

Monsieur le Ministre,

Je fais suite à la lettre du 11 mars dernier, par laquelle les autorités françaises ont transmis à la Commission, au titre de la procédure de notification prévue à l'article 45 du règlement (UE) n° 1169/2011<sup>1</sup>, un projet de décret relatif à l'indication de l'origine du lait et des viandes utilisées en tant qu'ingrédient.

Selon cette législation, la France doit observer une période de statu quo de trois mois à compter de la date à laquelle le projet de mesure a été notifié à la fois à la Commission et aux États membres. Les États membres n'ayant été informés du projet de mesure que le 6 avril 2016, celui-ci ne peut donc pas être adopté avant le 6 juillet 2016.

La Commission note que les autorités françaises ont souligné le caractère «expérimental» du projet de décret et que les dispositions notifiées ne s'appliqueront que jusqu'au 31 décembre 2018, bien que l'on puisse aussi arguer que l'article 6 du projet de décret, qui traite des amendes, est difficilement conciliable avec ce caractère expérimental.

<sup>1</sup> Règlement (UE) n° 1169/2011 du Parlement européen et du Conseil du 25 octobre 2011 concernant l'information des consommateurs sur les denrées alimentaires (JO L 304 du 22.11.2011, p. 18).

La Commission prend également note du fait que les autorités françaises ont la louable intention de lui soumettre un rapport sur l'application du projet de mesure avant son expiration. L'analyse coûts-avantages des exigences en matière d'étiquetage fixées par ledit projet pourrait aussi porter sur les conséquences pour les produits importés d'autres États membres.

Enfin, la Commission souhaiterait rappeler aux autorités françaises que le projet de décret devra être notifié au comité OTC de l'OMC afin que les membres de cette dernière puissent présenter leurs éventuelles observations, qui devraient être prises en considération. Dans ce contexte, la Commission attire l'attention des autorités françaises sur l'exemption prévue à l'article 5 du projet de décret, qui risque d'être perçue par certains membres de l'OMC comme une discrimination de jure à l'encontre des produits importés de pays tiers. En fonction de l'effet que ce décret aurait à l'égard de leurs produits, les membres de l'OMC pourraient même y voir une discrimination de facto à l'encontre de leurs produits.

Je vous prie de croire, Monsieur le Ministre, à l'assurance de ma haute considération.

