

INTERPRETATION OF REGULATION (EU) No. 775/2018

During IFOAM-EU meets business, I saw that more than someone has doubts about the interpretation of Reg (EU) No. 775/2018.

Hoping it may be useful, I translated and adapted the circular letter we sent to our members on this issue.

THE ORIGIN OF PRODUCTS/INGREDIENTS

For some products (honey, fruit and vegetables, fish, beef and beef-based products, olive oil ...) European regulations **already in force** prescribe the obligation to indicate origin or provenance; for other products (e.g., in Italy: processed tomato, milk and dairy products, rice, durum wheat for pasta ...) national regulations may impose the obligation to indicate the origin (although they are generally illegitimate due to a lack of notification and therefore disapplicable by any national court).

Regulation (EU) 775/2018 of May 28, 2018 is the *implementing act* that introduces the procedures for the application of article 26, paragraph 3, of **Regulation (EU) no. 1169/2011** as regards the rules on the indication of the country of origin or the place of origin of the **primary ingredient** of all the food.

Paragraph 3 establishes 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:***

(a) the country of origin or place of provenance of the primary ingredient in question shall also be given; or

(b) the country of origin or place of provenance of the primary ingredient shall be indicated as being different to that of the food.

(...)”

Regulation (EU) 775/2018 **does not always apply**, but only where the omission could mislead the consumer as to the **true** country of origin or place of provenance of the primary ingredient, in particular if the information accompanying the food or the label as a whole would otherwise imply that it the primary ingredient has a **different** country of origin or place of provenance.

In the label of a product made in Italy whose primary ingredient isn't Italian it is not generally necessary to declare the different origin, but **it becomes mandatory when the label claims “made in Italy”** (literally or with graphic references, e.g the [colors of the] Italian flag or a drawing of the Colosseum or of a gondola, symbols or terms).

“The regulation aims at preventing misleading food information which implies a certain origin of the primary ingredient(s), when in fact its/their true origin is different”.

The regulation will apply from 1 April 2020, but products labeled before this date may be sold until stocks are exhausted.

WHAT IS THE PRIMARY INGREDIENT

Article 2 of the reg. (EU) n. 1169/2011 defines as "primary ingredient" an ingredient **OR** ingredients of a food that represent more than 50 % of that food **OR** which are usually associated with the name of the food by the consumer and for which in most cases a quantitative indication is required.

Reference is made to Article 22 of Regulation (EU) no. 1169/2011 (Quantitative indication of ingredients).

So, in a "**biscuit with chocolate nuggets**", even if wheat flour is prevalent in terms of quantity, the primary ingredient is "**chocolate nuggets**", as it is in the name of the food (which can be the legal name or a customary name or a descriptive one) and is essential to characterize it; if the name is "**spelta biscuit with chocolate nuggets**", **BOTH** spelta **AND** chocolate nuggets are the primary ingredients.

Don't focus merely on **ONE** "primary ingredient", as primary ingredient is "an ingredient **OR ingredients**" that represent more than 50 % of that food **OR** which are associated with the name of the food".

It means that in an "**orange marmalade**" the primary ingredient is **ORANGE** (and not **SUGAR**, which however prevail over oranges in terms of weight); but oranges **AND** cane sugar are the main ingredients in an "**ORANGE marmalade WITH CANE SUGAR**".

WHEN IT IS NOT NECESSARY TO INDICATE THE ORIGIN OF THE PRIMARY INGREDIENTS

Regulation (EU) n.775 / 2018 **DOES NOT** apply in the cases of:

- Geographic terms in the usual and generic names whose common interpretation is clear. I don't know if it happens in other countries too, but in Italy we have strange habits about the names of food: the common name of sweet potato is "*patata americana*", the common name of witloof chicory is "*insalata belga*" (Belgian salad); the common name of Sponge cake is "*pan di Spagna*" (Spanish bread), the common name of corn is "*granoturco*" (Turkish wheat), there is a 100% Italian dessert whose name is "*zuppa inglese*" (English soup), but there is "*Russian salad*" too... In these and similar cases, everybody knows the name is customary and not related with the named country: details about the real origin are needless.
- Products with a protected designation of origin (**PDO**), as their origin is for definition absolutely clear, or with a protected geographical indication (**PGI**) (and in its case it is a bad choice, as many PGIs are processed in a specific location, but the origin of ingredients can be different), pursuant to Article 1, paragraph 2 of the reg. (EU) n. 775/2018;
- Labels in which the reference to the origin is in a trademark or in the company name or address, ex whereas 29 of the reg (EU) n. 1169/2011.

It means that the simple indication "*Napoleon Sarl, Rue de la Bastille 1, Paris, France*" (or a **registered trademark** with Napoleon's silhouette, in the absence of other wordings or images (a drawing of the Eiffel tower, a French flag...) that refer to an origin, **does not constitute a reference to the origin and does not involve any further obligations**.

MADE IN XXX?

Instead, wordings like **"produced in France"**, or **"made in Italy"** refer to the origin, as they might suggest that even the primary ingredients are of French or Italian origin.

HOW TO INDICATE THE ORIGIN OF THE PRIMARY INGREDIENTS

Article 2 of the reg. (EU) n.775/2018 states that the indication of the country of origin or place of origin of a primary ingredient (if different from the country of origin or place of provenance indicated for the final products) should be supplied with the wording:

- i) **"EU"**, **"non-EU"** or **"EU and non-EU"**; or
 - ii) **the name of a region** of several Member States or third countries (for example "the Amazon Forest", which covers part of Brazil, Colombia, Peru and other Latin American countries and is a clear indication for the average consumer normally informed);
 - iii) **the FAO fishing zone**, or the sea or freshwater body of water; or
 - iv) **the name of one or more Member States or third countries**; or
 - v) **a region or any other geographical area** within a Member State or a third country, very clear for the average consumer who is normally informed; or
 - vi) **the country of origin** or place of provenance;
- or through a (opaque and very unpleasant) statement like **"[name of the primary ingredient] does not come do not come from [country of origin or place of origin of the food]»**.

ORGANIC, A WORLD APART

For the specific of organic products, according to article 24 of the reg. (EC) n.834 / 2007, the label **already** bears the relevant indication among:

- **"Agriculture Italy"** when the agricultural raw material was cultivated in Italy,
- **"EU agriculture"** when the agricultural raw material was grown anywhere in the EU,
- **"Non-EU agriculture"** when the agricultural raw material has been grown in third countries,
- **"EU / non-EU agriculture"** when part of the agricultural raw material was grown in the Community and part of it was cultivated in a third country.

It follows that for products for which it is already indicated "Agriculture Italy", "EU Agriculture", "Non-EU Agriculture" IT IS NOT NECESSARY to indicate the origin of the primary ingredients, as this indication is already present in the label and there is no risk of misleading consumers.

These products can also freely carry the additional indication **"produced in France"**, **"Made in Italy"**, as well as illustrations, flags or symbols, without this implying other obligations.

Therefore, the obligation to indicate the origin of the primary ingredients (only when there is the possibility of confusion, e.g. "made in France", flags, drawings or other indications that suggest a specific different origin, but, at the moment, not addresses or registered trademarks) **only concerns the products with ingredients coming from «EU/non-EU agriculture»**.

The thesis that the indication «EU/non-EU agriculture» is sufficient by itself (since it details both the EU and non-EU origin of the ingredients), thus making the details of the origin of the primary ingredient superfluous is UNFOUNDED.

On closer inspection, the indication “EU/non EU” details that the agricultural origin of **ALL** the ingredients is **Planet Earth** (Europe and rest of the world), and so it will be for a long time, until, with a project “Organic.7”, we will bring organic farming to Mars and Jupiter.

“EU/non EU” refers to the origin of **ALL** the ingredients, pursuant to Regulation (EC) No. 824/2007, but it does not specify at all the origin of the **PRIMARY ONE(s)**, as expressly required by the reg. (EU) n.775/2018, whose scope isn’t to inform on the origin of **ALL** the ingredients, but of the **PRIMARY ONE(s)**: a label claiming “EU/non EU” **does not give any information** on the origin of the primary ingredient. Who know if it is from EU or extra EU?

WARNING No. 1

The reg. (EU) n.775/2018 excludes (provisionally, pending the adoption of specific rules) geographical indications included in registered trademarks.

However, we must point out that, at least in Italy, constant national jurisprudence considers this case relevant.

The Antitrust Authority has repeatedly declared that registered trademarks bearing reference to a country, a region or a locality used in advertisement and/or marketing are misleading if the geographical indications doesn’t correspond to the real production sites.

More sentences from Regional administrative courts and art. 21 of Legislative Decree 206/2005 (Consumer Code) declared misleading the use of a geographical name that was not true.

We therefore suggest to check the relevant national legislation about this issue.

If something similar to the Italian law is in force, we suggest companies whose business name includes a geographical indication, to cautiously detail the origin of the primary ingredients when using the indication «EU / non-EU agriculture».

The European legislation is hierarchically superior to the national ones, but it is better to avoid problems.

WARNING No. 2

Our **Austrian friends are very nice**, their competing authority is **much less so**.

Many **non-Austrian companies** have been fined in Austria because they indicated on the label "Agriculture Italy" or "EU agriculture" or "Non-EU agriculture" or "EU/non-EU agriculture" **instead of** "Italien Landwirtschaft", "EU-Landwirtschaft", "Nicht-EU-Landwirtschaft" or "EU-/Nicht-EU-Landwirtschaft".

The Austrian competent authority demands full respect of art.15 of Reg. (EU) n.1169/2011 (*“mandatory food information shall appear in a language easily understood by the consumers of the Member States where a food is marketed”*).

In all probability it will pretend that indication of origin is written in the same way easily understood: name of country of origin, or “Nicht-EU” or “EU und nicht-EU” or “[name of primary ingredient(s)] stammt/stammen nicht aus [country of origin or place of origin of the food]“...

So, if you are interested in the Austrian market, when you prepare the labels, keep in mind the oddity of the Austrian authority...