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EU Country of Origin Labeling - Member State Initiatives

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Report Highlights:

The proliferation of national Country of Origin Labeling (COOL) measures in recent months is a result of a provision in the EU's Food Information to Consumers (FIC) regulation that provides a way for individual Member States to enact mandatory COOL rules. Eight Member States now have national-level COOL measures that are in effect or in process. This report provides an overview of the EU's rules on COOL including the process for introducing national COOL requirements.

COUNTRY OF ORIGIN LABELING IN THE EU – MEMBER STATE INITIATIVES

INTRODUCTION

Since July 2016, eight European Union (EU) Member States have put forward mandatory Country of Origin Labeling (COOL) measures for certain types of food products. Although the EU adopted the [“Food Information to Consumers” \(FIC\) regulation 1169/2011](#) in order to harmonize labeling requirements at the EU-level, it is still possible for Member States to introduce, under certain conditions, national mandatory COOL rules. Eight Member States now have national-level COOL measures that are in effect or in process. The Commission has approved four of these measures despite vehement opposition by European food and drink associations. European associations and many other Member States believe these measures pose a danger to the single market and represent a renationalization of supply chains. Although both the Commission and these Member States argue that the rules are simply trials and have no effect on trade, third countries and EU industry groups are very concerned about these measures because of the lack of transparency in their development, the lack of proper notification to the World Trade Organization, and the long-term damage they pose to the single market.

BACKGROUND

The proliferation of COOL measures in recent months is a result of the EU’s food information legislation, applicable since December 13, 2014, that provides a way for individual Member States to enact mandatory national measures. Before the adoption of the EU’s FIC regulation, COOL was already mandatory for honey, fruit and vegetables, olive oil, fishery and aquaculture products and beef. It took EU legislators nearly four years to adopt the FIC proposal (proposed by the European Commission on January 30, 2008, and adopted by the European Parliament (EP) and Council on October 25, 2011) with COOL measures being one of the contentious issues. Although legislators reached an agreement to develop COOL on a more horizontal basis and eventually extend it to more food products and ingredients, Member States could not agree on harmonized criteria. For that reason, the FIC regulation includes a provision that allows Member States to adopt national COOL measures. Article 26 of the FIC regulation sets out detailed rules for COOL and lists the different actions the European Commission needed to undertake in order to further develop COOL rules. Article 39.2 sets out the criteria for Member States to introduce national COOL legislation.

FIC REGULATION – PROVISIONS ON COUNTRY OF ORIGIN LABELING

Mandatory COOL

Under Article 26 of the FIC regulation, mandatory COOL applies in the following cases:

- a. Where failure to indicate the country of origin might mislead the consumer;
- b. For fresh, chilled and frozen pork, sheep and goat meat, and poultry ([Implementing Regulation 1337/2013](#));

- c. When the country of origin is given voluntarily, i.e. on products for which COOL is not (yet) mandatory, but the origin of the primary ingredient is not the same as that of the food product. In such case, the label must indicate that the country of origin of the primary ingredient is different from that of the food product. This paragraph is still subject to the adoption of an implementing regulation.

Possible Extension of Mandatory COOL - Required Commission Actions

Article 26.5 of the FIC regulation required the Commission to submit reports by December 13, 2014, on the possible extension of mandatory COOL for the following foods:

- Types of meat other than beef, pork, sheep, goat and poultry
- Milk
- Milk used as an ingredient in dairy products
- Unprocessed foods
- Single-ingredient products
- Ingredients that represent more than 50 percent of a food

Article 26.6 required the Commission to submit a report by December 13, 2013 on the possible introduction of COOL for meat used as an ingredient. These reports are listed below.

| Food Category | Published |
|--|-------------------|
| <u>Commission Report on mandatory COOL for meat used as an ingredient, accompanied by a Commission staff working document on consumers' attitudes, feasibility of possible scenarios and impacts</u> | December 17, 2013 |
| <u>Commission Report on mandatory COOL for unprocessed foods, single-ingredients foods, ingredients that represent more than 50 percent of a food</u> | May 5, 2015 |
| <u>Commission Report on mandatory COOL for milk, milk used as an ingredient in dairy products and types of meat other than beef, pork, sheet, goat and poultry</u> | May 5, 2015 |

According to the report on milk, dairy products and minor types of meat, consumers are interested in the origin of such products but not prepared to pay the additional cost for that information. The report concludes that the existing options for voluntary COOL would be the most suitable. The study found that consumers' interest in COOL of unprocessed foods, single ingredient products and ingredients that represent more than 50 percent of a food is lower than for other food categories. The report concludes that introducing mandatory COOL would not be the most suitable option as it leads to increased production costs which would ultimately be passed on to the consumers. It finds that the current options for voluntary COOL would be preferable to mandatory labeling measures.

Possibility to Enact National COOL Measures

Article 39 of the FIC regulation allows Member States to introduce mandatory COOL measures “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.”

Article 45 stipulates the notification procedure for the introduction of mandatory national measures. Member States must notify the Commission and the other Member States in advance of the envisaged measures and provide a justification. The Commission consults with the Standing Committee on Plants, Animals, Food and Feed (composed of Member State technical experts) if “it considers such consultation to be useful or if a Member State so requests. In that case, the Commission shall ensure that this process is transparent for all stakeholders.” A Member State may introduce the envisaged measures three months after their notification if the Commission did not issue a negative opinion. In case of a negative opinion, the Commission will initiate the “[examination procedure](#)” to determine whether the measures may be implemented, subject, if necessary, to modifications. Article 45.5 explicitly specifies that the notification procedure established by Directive 98/34, now repealed by [Directive 2015/1535](#), on information in the field of technical regulations information system (TRIS) does not apply to the notification of national COOL measures.

NEW MEMBER STATE COOL INITIATIVES

France was the first Member State to notify national COOL measures for milk, milk used in dairy products and meat used as an ingredient in foods to the Commission under the FIC regulation procedure. The Commission approved the French initiative as a two-year trial scheme, which will be in place from January 1, 2017 until December 31, 2018, to assess whether consumers are prepared to pay more for certain origins. France is supposed to report the findings of the pilot project back to the Commission and the other Member States. The Commission’s non-objection to the French draft law then triggered the wave of similar national COOL initiatives from other Member States. Under the French measure, for products containing more than 8 percent meat, the label must indicate the place of birth, raising and slaughter of the animals used in the preparation of the products. For products containing more than 50 percent milk, the label must indicate the “country of collection” as well as the “country of transformation.” If the collection or production took place outside France, the label may state the origin as “EU” or “non-EU.”

The Italian and Lithuanian COOL schemes for milk and milk used as an ingredient in dairy products were given the green light because they are also limited in time and both Member States committed to reporting on the impact of the schemes on the internal market. The schemes would reportedly include a mutual recognition clause to allow the entry of products lawfully manufactured in other Member States. Italy’s law on COOL of dairy products such as milk, yoghurt, cheese and butter will become applicable on April 19, 2017. As of that date, the indication of the “country of milking” as well as the “country of processing” will be mandatory on dairy product labels. If the country of origin is not Italy, product labels may state the origin as “EU” or “non-EU.”

The list of Member State COOL measures and their status is listed below.

Table of National COOL Initiatives and Status

| Member State | Products | Status |
|---------------------|--|---|
| France | Milk, milk used in dairy products, meat used as an ingredient in food | In force since January 1, 2017 |
| Italy | Durum wheat and semolina in pasta | Informally sent but not officially notified to Commission |
| Italy | Milk and milk used in dairy products | Enters into force on April 19, 2017 |
| Lithuania | Milk and milk used as an ingredient in dairy products | Approved by Commission |
| Portugal | Milk and milk used in dairy products | Approved by Commission |
| Romania | Milk and dairy products | Not notified to Commission |
| Greece | Milk and milk used as an ingredient in dairy products | Notified to Commission |
| Greece | Rabbit meat | Notified to Commission |
| Finland | Milk, milk used as an ingredient in dairy products, meat used as an ingredient in food | Notified to Commission |
| Spain | Milk and dairy products | In progress |

LACK OF TRANSPARENCY IN NEW COOL MEASURES

Before the introduction of the FIC regulation, Member States' efforts to enact mandatory COOL measures had to go through the Technical Regulation Information System (TRIS) procedures under Regulation 98/34 (now Directive 2015/1535), in which any legislative projects would be notified to the Commission and analyzed for their compliance with EU legislation. Earlier Member State initiatives to introduce mandatory COOL measures, notified under the TRIS procedure, were all rejected by the European Commission as contrary to EU law.

Unlike the TRIS procedure, the FIC regulation does not require the establishment of a publicly available list of notifications making it hard to keep track of notified texts, justifications and deadlines. So far, none of the national COOL measures have been notified to the WTO. It is the responsibility of the Member States to notify national measures to the WTO. However, as the recently adopted national

COOL rules include a mutual recognition clause, Member States insist the notification requirement does not apply.

At a conference in December 2016, Health & Food Safety Commissioner Andriukaitis said he had no choice but to clear the draft national initiatives because it is a legal option provided for in the FIC regulation. He emphasized that this was not the Commission's choice but what the EU legislators wanted at the time the FIC proposal was adopted.

INDUSTRY REACTIONS

Although the individual Member States putting COOL measures forward argue that these laws are trials, affect only domestic ingredients, and have no impact on trade with other countries, third country trading partners and European industry groups are extremely concerned about the laws' impact on the European single market. Many of the EU's major industry groups have vigorously lobbied against these measures at both the Member State and EU levels. Industry groups argue that these measures undermine the free movement of goods within the EU by incentivizing their farmers to buy local ingredients, thus shortening and "renationalizing" ingredient supply chains. Additional costs of segregation of ingredients from different sources and other production costs will inevitably either be passed on to the consumers or result in lower prices for producers. They believe that the measures are also misleading to consumers, as they imply a difference in quality for "local" ingredients versus those sourced from other countries.

FoodDrinkEurope: As the association representing the EU's food and drink industries, FoodDrinkEurope believes that COOL measures threaten the EU single market for food. The national COOL initiatives go against this fundamental EU principle and are being used as political statements in the current anti-EU climate. The renationalization of EU policy sets a dangerous precedent as it may be almost impossible to repair the damage to the single market. They believe that political leadership is needed to prevent further fragmentation of the EU market and transcend "gastro-nationalism." Food manufacturers already apply voluntary COOL, which according to the Commission's studies is the best approach.

European Dairy Association (EDA): According to EDA, mandatory COOL suggests false advantages to producers, as origin labeling is not the key factor for consumer purchase decisions. Additional labeling results in higher production cost, which impacts producers, and farmers, as well as consumers. Mandatory COOL is not feasible for dairy products and will have a negative impact on international trade as well as on the free movement of goods within the EU. EDA agrees with the Commission's finding that state voluntary COOL is the best option for milk and dairy products. EDA believes that the individual COOL measures go far beyond food law and that the EU Commission failed to defend the single market.

European Association of Dairy Trade (Eucolait): According to Eucolait, the main impact of mandatory national COOL measures will be the diversion of trade flows while the flexibility of the industry in terms of sourcing will be restricted. These measures will lead to higher production costs, which most

consumers are unwilling or unable to pay. Individual COOL measures also breach one of the fundamental EU principles, i.e. the free movement of goods.

POTENTIAL IMPACT ON U.S. EXPORTS

As only France's COOL law is currently in force, U.S. and European industry groups are attempting to quantify the trade impact of the French and other measures. However, the mandatory measures for dairy and meat ingredients will undoubtedly affect U.S. trade, as food producers will be inclined to source ingredients locally if the origin of imported ingredients must be indicated in the list of ingredients on the label. Additionally, the patchwork nature of these measures subjects exporters to a range of different labeling rules and requirements will likely create uncertainty and confusion for U.S. exporters.

RELATED REPORTS

- [EU-28 FAIRS Report](#)
- [Updates on the new retail law and COOL labeling in Romania](#)

LINKS

- [EU & Member State FAIRS Reports](#)
- [EU COOL Measures](#)