



28.2.2017

## NOTICE TO MEMBERS

**Subject: Petition No 0698/2016 by C. R. M. (Spanish) regarding the labelling of products imported from third countries**

### 1. Summary of petition

The petitioner states that the labelling of products imported from third countries does not comply with EU regulations given that it does not specify the product's country of origin. Furthermore, he also complains that products produced in the EU using imported primary resources do not specify the country of origin of the primary resources either. The petitioner complains that the labelling of certificates of origin for products that have come from Israel, the occupied territories and Western Sahara, is particularly problematic. The petitioner asks for the labels to comply with international law, and asks for legislative action to be taken in order to ensure labelling and geographical indications do comply with international regulations in force.

### 2. Admissibility

Declared admissible on 7 December 2016. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 28 February 2017

Several pieces of EU legislation currently provide for mandatory labelling covering the geographical origin of the product in question. However, there is no general requirement as regards all products.

The requirement, where it exists, often relates to the designation of the "country of origin"<sup>1</sup>, but sometimes other expressions, such as the "place of provenance", for foods, are also used<sup>2</sup>. Subject to any specific provision to the contrary in the relevant provisions of EU legislation, in principle the determination of the country of origin of foods will be based on the Union's non-preferential rules of origin laid down in customs legislation<sup>3</sup>.

When the labelling covering the geographical origin of the product in question is explicitly required by the relevant provisions of EU law, it must be correct and not misleading to the consumer.

When origin labelling is not mandatory, if the origin is voluntarily indicated, the information must be correct and not misleading to the consumer<sup>4</sup>.

In any case, origin labelling becomes mandatory for foods, when the omission of the information that the product originates in the controversial area would mislead the consumer as to the true origin of the product,<sup>5</sup> and more generally when such omission, according to the context, causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise<sup>6</sup>.

Furthermore, where the origin of a food is voluntarily given and is different from the one of the main ingredient, the origin of the main ingredient must be given or at least indicated as being different to the origin of the food e.g. Italian tomato sauce with tomatoes from China. The modalities of the application of this rule are to be laid down in a Commission implementing act<sup>7</sup>.

In the past, along these lines, the Commission adopted a Notice as regards products coming from Israeli settlements.<sup>8</sup> The Notice concerns specifically Israeli settlements as the application of existing EU legislation on labelling of products to products originating in Israeli-occupied territories has been the subject of notices or guidance adopted by the relevant

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<sup>1</sup> See, for example, among many others, for cosmetics (Regulation 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products, article 19(1)(a)); for fresh fruit and vegetables (Regulation (EU) 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) 922/72, (EEC) 234/79, (EC) 1017/2001 and (EC) 1234/2007, and Commission Regulation 543/2011, of 7 June 2011, laying down detailed rules for the application of Council Regulation (EC) 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors, Article 6, and Annex 1 Part A 4(B)); for fish (Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000, Article 38).

<sup>2</sup> Article 2(g) and 26 of Regulation No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004.

<sup>3</sup> Regulation No 1169/2011, Article 2(3) and recital 33.

<sup>4</sup> Article 6 of Directive 2005/29/EC, and Articles 26(3) and 36 of Regulation 1169/2011.

<sup>5</sup> Article 26(2)(a) of Regulation 1169/2011.

<sup>6</sup> Article 7(1) of Directive 2005/29/EC.

<sup>7</sup> Article 26(3) of Regulation 1169/2011.

<sup>8</sup> C(2015)7834.

authorities of several Member States. There was a demand for clarity from consumers, traders and national authorities about existing EU legislation on labelling of products from Israeli-occupied territories.

Even if the Notice is not binding, the relevant EU legislation is binding. While the Notice reflects the Commission's understanding of the relevant EU legislation, enforcement of the relevant rules remains the primary responsibility of Member States. According to that case-law, while the choice of penalties remains within their discretion, Member States must ensure that penalties for infringements of provisions of EU law are effective, proportionate and dissuasive.<sup>1</sup> The Commission ensures, as guardian of the Treaties, compliance with these obligations of Member States if need be by way of infringement proceedings. This Notice is without prejudice to other requirements established by EU legislation, and to the interpretation which the Court of Justice may provide of the relevant EU legislation on labelling and information to consumers.

The Commission has to date not considered it appropriate to propose specific legislation on the issue of labelling of products coming from non-self-governing territories, occupied territories and in general territories whose status is disputed.

First, legislation on information about the origin of products aims at informing consumers and building confidence. It is based on a case by case assessment as regards the product concerned, and consumer expectations. As mentioned above, there is no general requirement as regards all products in EU law, obliging all products to indicate their origin.

Second, existing EU law already provides a solution by way of general provisions on the matter, especially for dealing with the clearest cases, as any indication of origin must be correct and not misleading. Enforcement of these rules remains the primary responsibility of Member States. For assessing whether the indications are correct, reference is normally made to the internationally recognised borders of the third country in question. For assessing that labelling is not misleading, the expectations of consumers are relevant, under existing EU provisions, and such assessment is normally better made by the authorities of the relevant Member States, which are more aware of their consumers' expectations.

Third, a specific piece of legislation on this matter, aimed at imposing specific requirements as regards products from certain territories, does not appear to exist in the laws of Member States, and there is no requirement under international law to adopt specific labelling laws of that type.

Finally, each situation is different, and cases of disputed areas or territories cover different realities, which may deserve to be treated differently. There is no "one size fits all" solution for this matter. Even a simple reference to "international law" may not be enough to define what the right labelling must be in cases where such status may be controversial under international law itself.

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<sup>1</sup> See, inter alia, Case 68/88 *Commission v Greece* [1989] ECR 2965, paragraphs 23 and 24; Case C-326/88 *Hansen* [1990] ECR I-2911, paragraph 17; Joined Cases C-387/02, C-391/02 and C-403/02 *Berlusconi and Others* [2005] ECR I-3565, paragraph 65.

## Conclusion

In the light of the above, the Commission considers that EU law already contains general provisions which should help put an end to incorrect or misleading labelling. At this stage, the Commission is not considering to propose a specific piece of legislation on this matter.