Mandatory origin labelling of food in the European Union: Between national limitations and supranational inaction

An analysis of the Austrian draft ordinances of 4 May 2022, exemplifying current national legislative ambitions regarding mandatory origin labelling of food, and the European Commission's initiative to reform origin labelling of food across the European Union.

MASTER THESIS

in fulfilment of the requirements for the degree

Master of Arts (MA) in European Union Studies

Salzburg Centre of European Union Studies (SCEUS)

Paris Lodron University Salzburg

Supervised by

Assoz. Prof. Mag. Dr. Günter Herzig

(Department of International Law, European Law and Fundamentals of Law)

Submitted by

Kathrin Lusser

Salzburg, January 2024

Table of contents

Abbreviations

AG	Advocate General
Commission	European Commission
COOL	Country-of-origin labelling
Council	European Council of Ministers
Court	European Court of Justice
DG	Directorate General
ECJ	European Court of Justice
EFSA	European Food Safety Authority
EIT	European Institute of Innovation & Technology
EU	European Union
FICR	Regulation (EU) 1169/2011 on the provision of food information to consumers
MS	Member State of the European Union
MSs	Member States (plural) of the European Union
PAFF Committee	Standing Committee on Plants, Animals, Food and Feed
PDO	Protected designation of origin
PGI	Protected geographical indication
PIR	Primary Ingredient Regulation (Implementing Regulation (EU) 2018/775)
TRIS	Technical Regulation Information System
TSG	Traditional speciality guaranteed

1. Introduction

1.1. Overview

Accounting for a turnover of 1.121 billion euros per year with 4.6 million employees, the food and drink industry is not only a leading manufacturer but also a leading employer in the European Union ('EU') (figures from 2022).[1] It is a burgeoning sector that had to face major challenges in the past and will need to do so in the future, requiring a high degree of flexibility and adaption skills, not only to tackle challenges but also to keep up with contemporary trends.

According to the European Institute of Innovation & Technology, one continuously popular food trend of the past years is the consumers' call for more sustainable food systems that fully take into account the socio-economic impacts of climate change.[2] To realise a more sustainable food system, the European Commission (thereafter simply referred to as 'Commission') issued several official binding and non-binding acts; its Farm to Fork Strategy for a 'fair, healthy and environmentally-friendly' food system of 2020 being among the most important examples thereof.[3] Placed at the core of the European Green Deal, the Farm to Fork Strategy aims to transition towards a sustainable food system in the EU. By the end of 2023, the Commission intends to present a legislative framework for a crisis-resistant, climate-friendly and sustainable food system, ensuring economic opportunities, fair incomes for all operators in the food chain while countering diet related diseases and enhancing the overall health of citizens in the EU. This legislative instrument – the first of its kind – 'will promote policy coherence at EU and national level, mainstream sustainability in all food-related policies and strengthen the resilience of food systems'.[4]

---

1 FoodDrinkEurope, 'Data & Trends: EU Food and Drink Industry' (2022) FoodDrinkEurope, 2ff <FoodDrinkEurope-Data-Trends-2022-digital.pdf> accessed 13 June 2023.

2 Compare: EIT Food, 'Top 5 European food trends in 2023' (*EIT Food*, 10 January 2023) <Top 5 European food trends in 2023 - EIT Food> accessed 26 July 2023; EIT Food, 'Top 5 European food trends in 2022' (*EIT Food*, 28 January 2022) <Top 5 European food trends in 2022 - EIT Food> accessed 26 July 2023; EIT Food, 'Top 5 European food trends in 2021' (*EIT Food*, 20 January 2021) <The top 5 trends for the agrifood industry in 2021 - EIT Food> accessed 26 July 2023.

3 Commission, 'A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system' (Communication) COM (2020) 381 final (Farm to Fork Strategy).

4 Farm to Fork Strategy, 5.

Against this background, the Commission noted that consumers are paying increasingly more attention to what they consume, considering sustainable, environmentally friendly and ethical aspects of food including where it comes from.[5] Valorising such factors, consumers can only make informed food choices if clear food information is available and accessible, yielding healthier and more sustainable diets. To facilitate such optimised food choices, the Commission suggested to 'propose harmonised mandatory front-of-pack nutrition labelling and […] will consider to propose the extension of mandatory origin or provenance indications to certain products, while fully taking into account impacts on the single market' under the Farm to Fork Strategy.[6]

Mandatory origin labelling of food is nothing new in the EU. The Commission's announcement to consider the extension of mandatory origin or provenance indications to certain products would add to the list of food categories that are already put under product-specific mandatory labelling rules within the EU. This applies, for instance, to fresh fruits and vegetables which are sold to customers.[7] With the Regulation (EU) 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers (thereafter referred to as 'FICR')[8] coming into effect in 2014, origin labelling rules across the EU became a new impetus, as an expansion of compulsory origin labelling rules for broader product categories were introduced. In addition, the legal framework for Member States of the European Union (thereafter referred to as 'MS' in singular or 'MSs' in plural) seeking to extend the list of food categories subject to mandatory origin labelling schemes within their national territory was introduced.

Therefore, throughout the past few years, a handful of MSs sought to introduce national rules on origin labelling. The regulatory framework of the FICR to do so is very narrowly defined as MSs have to comply with a set of requirements that define their room for manoeuvre narrowly. France was one of the first countries making use of this possibility by introducing

5 Farm to Fork Strategy, 2-4.
6 ibid, 13.
7 For the complete list of food categories under compulsory origin label, see chapter 3.3.3.
8 European Parliament and Council Regulation (EU) 1169/2011 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 [2011] OJ L304/18 (FIC Regulation or FICR).

national rules on the mandatory origin labelling for milk and dairy products. Initially, the decree came into force on 1 July 2017 after having received its approval from the Commission. However, the French dairy producer, Groupe Lactalis, brought legal action to annul the decree at issue, questioning its compliance with Union law. The competent French Council of State referred a preliminary ruling to the European Court of Justice (referred to as 'ECJ' or 'Court'), known as judgement C-485/18 *Groupe Lactalis v France* (referred to as 'Lactalis judgement'), in which Court maintained that France's decree is not compatible with the FICR.[9]

After the pronouncement of the decision on 1 October 2020, silence fell over the matter of domestic origin labelling – until Austria notified two national country-of-origin labelling ('COOL') measures to the Commission in May 2022: The first refers to the obligation to indicate the origin of meat, milk and eggs as a primary ingredient in packaged foods[10], and a second one which stipulates the indication of the origin of meat, milk and eggs as a primary ingredient for meals served in mass catering establishments.

1.2. Research interest

While increasingly more food products contain labels which indicate the farming method, nutri-score value, or carbon footprint, consumers are often unaware of where the products originate from. In the absence of EU-wide origin labelling rules covering all applicable food categories, a rise in national proposals to extend the scope of food products subject to mandatory origin labelling was observable in recent years. Despite the consumers' persistent call for increased food transparency, this trend seems to have come to an end. Apart from the Austrian draft decrees, no other COOL measure has been notified in the past three years.

The present thesis seeks to present a comprehensive analysis of origin labelling in the EU, highlighted from a legal and political perspective. It seeks to identify the factors which can explain why both at the national and EU level, there is little to no progress in the area of mandatory origin labelling. Focus will be drawn on the legal room for manoeuvre for MSs to introduce national labelling measures, especially after the ECJ tightened the national scope of

9 Case C-485/18 *Groupe Lactalis v France* [2020] ECR I-763.

10 The terms 'packaged food' and 'packed food' will be used interchangeably in the course of the present thesis. While the first term is used in the Austrian draft ordinance, the latter is more commonly used in Union legislations. Both terms are, however, not further defined in the legal framework of the EU.

application significantly. The two Austrian proposals are especially suitable to examine this question. Not only are they the first national undertakings after the scope of application for national endeavours was considerably tightened following the ECJ's Lactalis judgement, but they also include both packaged foods and non-packed foods. The legal analysis mainly focuses on the draft ordinance on packaged foods (chapter 5), as prepacked food is legally and politically more contested, due to its potential effects on the Union's internal market. In contrast, meals served in domestic mass catering establishments (i.e. non-prepacked food) have fewer implications across the EU as it hardly impacts the single market (chapter 6).

The thesis is structured as follows: After having scrutinised the content of the two Austrian draft decrees including recent developments in regard to their legal status and political debate in chapter 2, the legal framework for food labelling in the EU will be comprehensively laid out in chapter 3. This will be crucial for the subsequent legal analysis of the Austrian proposals as conducted in chapter 5 and 6. Beforehand, however, attention is drawn to previous COOL measures notified by a handful of MSs. A preliminary comparison between previous national measures and the Austrian measure on packaged foods (chapter 5.4) as well as between the two Austrian proposals in question will be carried out (chapter 6.2). Chapter 7 will have a look at Brussels by scrutinising the current developments of the Commission's endeavour to reform the FICR under the auspices of its Farm to Fork strategy. The key findings are then summarised in chapter 8.

Thereby, the following research questions shall be answered:

> *"Which challenges exist in the adoption of national COOL measures and to which extent did the Lactalis judgment influence the scope of application?"*
>
> *"Which factors are decisive for the success of previous national COOL measures?"*
>
> *"Why (not) to expect unionwide origin labelling rules anytime soon?"*

2. Austrian (draft) ordinances

With its government programme, issued in 2020 and determined for the period 2020-2024, Austria's political parties in power – The Austrian People's Party along with The Greens – came forward with Austria's first attempt to extend the list of food products covered under mandatory origin labelling. Austria's government programme 2020-2024 reads as follows:[11] 'Mandatory origin labelling of the primary ingredients milk, meat and eggs in mass catering (public and private) and in processed food from 2021 onwards'.[12]

Subsequently, on 4 May 2022, the Austrian Federal Ministry for Social Affairs, Health, Care and Consumer Protection published, the corresponding draft ordinances: The first draft decree concerns the obligation to indicate the origin of meat, milk and eggs as a primary ingredient in packaged foods[13] (therein referred to as 'Ordinance on packaged foods') and the second decree relates to the obligation to indicate the origin of meat, milk and eggs in meals served in certain mass catering establishments[14] (therein referred to as 'Ordinance on mass catering establishments'). Along with both ordinances comes an explanatory note, a simplified outcome-oriented impact assessment as well as an accompanying letter, providing more in-depth information about the ordinances.[15] The two draft ordinances were sent out for national review on 4 May 2022 with the review period ending on 17 June 2022 and in parallel, both ordinances were notified to the Commission, pursuant to the notification process of Art. 45 FICR.

For the sake of totality, it is worth mentioning that, along with the envisaged draft ordinances, the Austrian government already adopted an ordinance on the requirement to provide

---

11 Die Neue Volkspartei Österreichs & Die Grünen, 'Aus Verantwortung für Österreich. Regierungsprogramm 2021-2024' (2020), 154.

12 Original wording: Verpflichtende Herkunftskennzeichnung der Primärzutaten Milch, Fleisch und Eier in der Gemeinschaftsverpflegung (öffentlich und privat) und in verarbeiteten Lebensmitteln ab 2021.

13 Begutachtungsentwurf zur Verordnung des Bundesministers für Soziales, Gesundheit, Pflege und Konsumentenschutz über die Verpflichtung zur Angabe der Herkunft von Fleisch, Milch und Eiern als primäre Zutat in verpackten Lebensmitteln (BEGUT_55925AA8_62AC_4D63_8989_6FB222DF66A5) [04 May 2022] ('Ordinance on packaged foods').

14 Begutachtungsntwurf zur Verordnung des Bundesministers für Soziales, Gesundheit, Pflege und Konsumentenschutz über die Verpflichtung zur Angabe der Herkunft von Fleisch, Milch und Eiern in Speisen, die in bestimmten Einrichtungen der Gemeinschaftsverpflegung abgegeben werden (BEGUT_0F1764D3_FB8B_49D0_AB78_F7BB94B44F18) [04 May 2022] ('Ordinance on mass catering establishments').

15 All documents are available on the website of the Federal Legal Information System (RIS): https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=BEGUT&Dokumentnummer=BEGUT_55925AA862AC_4D63_8989_6FB222DF66A5.

information about the origin of meat, milk and eggs along the food supply chain. Promulgated on 20th December 2021, its aim is to contribute to more transparency when it comes to the forwarding of information regarding the origin of meat, milk and eggs along the food supply chain. The ordinance applies to domestic slaughterhouses and cutting plants, dairy plants and egg plants supplying other food companies with food that is not intended for sale to the end consumer. Hence, the ordinance seeks to ensure the traceability of raw materials or semi-finished throughout the supply chain, so that the origin(s) of the final product are identifiable. This ordinance can be understood as bedrock, paving the way for the government's plan to indicate the origin of meat, milk and eggs for the final consumers.[16]

2.1. Draft ordinance on packaged foods

The draft ordinance on packaged foods seeks to establish a binding obligation to indicate the origin of meat, milk and eggs as a primary ingredient in packaged food and applies to domestic food business operators, supplying packaged food to final consumers.[17] More precisely, food business operators are required to indicate the origin of the following ingredients on the labelling of packaged food, if they represent the primary ingredient of the packaged food:

- Meat sourced from beef, pork, sheep, goat or poultry;
- Milk, butter, sour cream, curd, yoghurt natural, whipped or cream cheese;
- Egg, liquid egg, yolk, egg white or dry egg.[18]

The ordinance was supposed to enter into force in January 2023. However, the Commission suggested reconsidering the adoption of national origin labelling measures, since it will present unionwide legislation on the obligation to label the origin of packaged foods as part of their Farm to Fork Strategy. Moreover, due to criticism raised within the national consultation

16 Verordnung zur Verpflichtung der Weitergabe von Information über die Herkunft von Fleisch, Milch und Eiern entlang der Lieferkette von Lebensmittelunternehmern in der Fassung der Bekanntmachung vom 20 Dezember 2021, (BGBl II 566/2021).
17 Ordinance on packaged foods, § 2.
18 Ordinance on packaged foods, § 3.

process, Austria decided to withdraw its proposal on 20 July 2022 and announced to continue consultations with different stakeholders on a national level to discuss further steps.[19]

2.2. Ordinance on mass catering establishments

Initially, the draft ordinance on mass catering establishments covered the identical milk, meat and egg products as the draft ordinance on packaged foods and required the indication of their origin provided that they constitute the primary ingredient of a meal. The decree was subject to several changes, one of them was the restriction of its scope of application: While the government programme talked about 'mass catering (public and private) establishments' as norm addresses, the draft itself only covered public operators. This may be a result of the criticism voiced by gastronomy businesses (see chapter 2.2), strongly opposing the government's plan.

After notifying the Commission about this proposed measure, it was clarified that a different notification process would be more suitable since the ordinance deals with non-prepacked food. In response, Austria withdrew the proposal on 23 May 2022 and modified it.[20] The reviewed ordinance came into effect on 1 September 2023 (see chapter 6 for further details).

2.3. Envisaged objectives

Despite the ordinance on mass catering establishments being revised, the objective of both draft ordinances remains unchanged, namely, to inform consumers about the origin of milk, meat and eggs when used as primary ingredient in either packaged foods provided by Austrian food business operators[21] or in meals served in mass catering establishments[22].

In addition, the Austrian government explained that the origin of a food is the most decisive factor when buying food. Consequently, to enable such informed food choices, the indication of a product's origin is indispensable. Furthermore, the legislators chose milk, meat and eggs

19 Anfragebeantwortung durch den Bundesminister für Soziales, Gesundheit, Pflege und Konsumentenschutz Johannes Rauch zu der schriftlichen Anfrage (12068/J) betreffend Verordnungen zur verpflichtenden Herkunftskennzeichnung für Lebensmittel und Speisen – Stand des Notifizierungsverfahrens (Geschäftszahl 2022-0.696.860, 31 October 2022) <https://www.parlament.gv.at/gegenstand/XXVII/J/12068> accessed 14 March 2023.

20 ibid.

21 Ordinance on packaged foods, § 1.

22 Ordinance on mass catering establishments, § 1.

as subject matter of the draft ordinances (and not other food categories) because the origin of those products is 'especially important to consumers'.[23] Apart from increasing food information and food transparency, Austrian Agricultural minister at that time, Elisabeth Köstinger, further stated that those ordinances, once entered into force, shall ensure that 'domestic products can also be consciously given priority in the future'.[24]

2.4. Political debate

Originally affiliated within the Ministry of Agriculture, Regions and Tourism, the responsibility for the undertaking of mandatory indication of origin fell to its minister, Köstinger, of the Austrian People's Party which made it one of her political core projects. After her resignation in May 2022, the responsibility was delegated to the Ministry for Social Affairs, Health, Care and Consumer Protection where it is now under the prerogative of its minister, Johannes Rauch, of the Austrian Green Party.[25]

The envisaged adoption of the two Austrian COOL measures has been widely discussed since the idea first appeared in the Austrian government programme in 2020. Strong arguments from those supporting and those opposing the envisaged measure exist in abundance. Generally, the debate centres around two main parties, i.e. the industry, chamber of commerce and gastronomy strongly advocate against the proposed measure as opposed to agriculture representatives, animal welfare associations and the responsible ministers, who welcome the idea of an extended mandatory origin labelling scheme. The following chapter shall provide an overview of the most frequently occurring reasonings, which were brought forward during the debate whereby the focus was set on general perceptions. The political debate surrounding the coming into effect of the ordinance on mass catering establishments will be dealt with in

23 Kommunikationsplattform VerbraucherInnengesundheit, 'FAQs zur nationalen Herkunfts-kennzeichnung' (Kommunikationsplattform VerbraucherInnengesundheit, 9 May 2022) <https://www.verbrauchergesundheit.gv.at/Lebensmittel/Kennzeichnung/herkunft/faq_nat_Herkunft.html#heading_1__Weshalb_wird_auf_nationaler_Ebene_eine_verpflichtende_Herkunftskennzeichnung_fuer_verpackte_Lebensmittel_eingef_hrt_> accessed 29 June 2022.

24 Bundesministerium für Landwirschaft, Regionen und Tourismus, 'Köstinger zu Herkunftskennzeichnung: „Gesundheitsminister greift Vorschläge der Landwirtschaft auf' [01 April 2021] <https://www.ots.at/presseaussendung/OTS_20210401_OTS0155/koestinger-zu-herkunftskennzeichnung-gesundheitsminister-greift-vorschlaege-der-landwirtschaft-auf> (accessed 24. August 2022).

25 Kamleitner F, 'Landwirtschaftsministerin Elisabeth Köstinger tritt zurück' (*lkonline*, 09 May 2022) <https://www.lko.at/landwirtschaftsministerin-elisabeth-k%C3%B6stinger-tritt-zur%C3%BCck+2400+3636504> accessed 21 June 2022.

greater detail in chapter 6. The withdrawal of the draft ordinance on packaged foods has not been discernibly covered in the media.

Increase in food transparency

Advocates of the reform argue that overall aim – to increase consumer's right to information and food transparency – will enable consumers to make more informed purchase choices. Consumers place more value on local products and have a right to know where their food products come from which is only possible if food is labelled accordingly. This consumer's demand is translated into the two ordinances on the origin indication of milk, meat and eggs in packaged food and in certain mass catering establishments.[26]

Economic benefits

Proponents, such as the president of the Chamber of Agriculture, Josef Moosbrugger, or former minister Köstinger, emphasise the positive aspects of the planned reform. Above all, it is expected to increase the market share of Austrian food products, which are affected by the ordinances and shall reinforce the valorisation of Austrian farmers and manufacturers including their respective products. Moosbrugger explains that Austrian family farms operate on higher environmental and animal welfare standards than is common in Europe and therefore face higher costs. Thanks to the planned labelling obligations, such products are now identifiable and consumers able to valorise and support family businesses committed to high quality principles.[27] According to Köstinger, a 1% increase in the purchase of domestic products would benefit the economy by an additional added value of 140 million euros.[28]

Increase in prices

Contrary to the aforementioned argument, critics argue that the obligation to indicate the origin of milk, meat and eggs in packaged food and in mass catering establishments will not

---

26 Kommunikationsplattform VerbraucherInnengesundheit, 'FAQs zur nationalen Herkunfts-kennzeichnung'.

27 Koch J, 'Milch, Fleisch, Eier: Österreich führt Herkunftskennzeichnung ein' (Agrarheute, 03 May 2022) <https://www.agrarheute.com/politik/oesterreich-herkunftskennzeichnung-zielgeraden-593205> accessed 21 June 2022.

28 Salzburger Nachrichten, 'Regierung beschließt Herkunftsbezeichnung für Lebensmittel' Salzburger Nachrichten (Salzburg, 04 May 2022) <https://www.sn.at/wirtschaft/oesterreich/regierung-beschliesst-herkunftsbezeichnung-fuer-lebensmittel-120854335> accessed 21 June 2022.

go without extra bureaucratic efforts, such as separate storage, processing and labelling of raw products. This burden must be borne solely by domestic manufacturers, as international competitors are not affected by the national measure, thereby disadvantaging Austrian producers and food business operators. Consequently, foreign products gain a competitive price advantage vis-à-vis domestic foods, as pointed out by Katharina Koßdorff, Managing Director of the Food Industry Association of the Austrian Chamber of Commerce. To compensate this financial dissonance, consumers will have to contribute by paying higher prices for Austrian food products. Unfortunately, Austria's envisaged measure peaks parallel to a significant rise in inflation. Koßdorff therefore argues, that Austria's proposed measure arrives at inconvenient times, putting an additional strain on the average household budget.[29]

Bad timing

Not only the current period of high inflation, but also the Commission's announcement to broaden the scope of food products covered by mandatory origin labelling, under the prerogative of the Farm to Fork Strategy, is highly debated. Austria's urge to introduce national measures, even though the Commission announced the publishment for the end of 2022 (now delayed to 2023) is incomprehensible to many opponents, such as the Chamber of Commerce.[30] However, the Ministry for Social Affairs, Health, Care and Consumer Protection underlined the necessity of a single-handedly nation approach, as an EU-wide system, promoted by the Commission, might be delayed further and could take months before entering into force.[31]

Gastronomy

Gastronomy businesses show relief after being exempted from the list of mass catering establishments subject to the ordinance. Counted as a success by the Chamber of Commerce, Gastronomy section chairman Mario Pulker brought forward that the gastronomy already suffered enough during the Covid-19 pandemic and should not, in addition, have to bear the

29 Wirtschaftskammer Österreich, 'Nationale Herkunftskennzeichnung wird Teuerung bei Lebensmitteln weiter anheizen' (Wirtschaftskammer Österreich, 06 May 2022) <https://news.wko.at/news/oesterreich/nationale-herkunftskennzeichnung-wird-teuerung-bei-lebens.html> accessed 21 June 2022.

30 ibid.

31 Kommunikationsplattform VerbraucherInnengesundheit, 'FAQs zur nationalen Herkunfts-kennzeichnung'.

burden, which the ordinance would impose on gastronomy operators.[32] Others, however, deem the expansion to the gastronomy sector as a necessary step, for instance Volker Hollenstein, Political Director of WWF Austria claims that especially in gastronomy establishments consumers want to know where the ingredients of their dishes comes from.[33]

Petition by the organisation "Echt-Ehrlich"

In addition, a petition, initiated by the organisation "Echt-Ehrlich" was launched with the aim to introduce 'immediate and comprehensive food origin labelling in Austria', thereby going beyond the government's envisaged legislation which only covers specific primary ingredients. The organisers of the petition are of the view that such rules could contribute to *inter alia* enhanced consumer protection, safeguarding of regional jobs, and climate protection if consumers increasingly purchase domestic products.[34] Within the established registration period (19-26 June 2023) around 150,000 valid registrations of eligible voters were recorded, thereby surpassing the 100,000 signatures required for the petition to be forwarded to the National Council for consideration, according to Art. 41(2) Federal Constitutional Law.[35]

---

32 Top Agrar, 'Herkunftskennzeichnung: Diskussion in Österreich verschärft sich' (*top agrar online*, 24 February 2022) <https://www.topagrar.com/schwein/news/herkunftskennzeichnung-diskussion-in-oesterreich-verschaerft-sich-12859522.html> accessed 21 June 2022.

33 Der Standard, 'Verpflichtende Herkunftsbezeichnung für Lebensmittel kommt' (*Der Standard*, 30 April 2022) <https://www.derstandard.at/story/2000135328688/verpflichtende-herkunftsbezeichnung-fuer-lebensmittel-kommt> accessed 21 June 2022.

34 ECHT-EHRLICH: 'Lebensmittel-Volksbegehren' (ECHT-EHRLICH, 2022) <https://www.lebensmittelvolksbegehren.at/> accessed 21 June 2023.

35 Bundesministerium für Inneres 'Volksbegehren „Umsetzung der Lebensmittelherkunfts-kennzeichnung!' (Geschäftzeichen 2023-0.497.572, 12 July 2023) <BM.I Dokumentvorlage (bmi.gv.at)> accessed 12 August 2023.

3. Legal framework for mandatory origin labelling

The introduction of national COOL measures is to be measured against primary law, mainly the free movement of goods and the FICR including the coinciding implementing regulations, as laid out in the following chapter. Despite harmonisation at the EU level, the consideration of primary law does not become obsolete, as the FICR explicitly demands that national COOL initiatives must be in line with the fundamental freedoms of the single market (Art. 38-39 FICR).

3.1. The Union's internal market

At the heart of the European integration project, the Union's internal market embodies the idea of a common area, where goods, persons, services and capital can freely move across borders without any internal barriers. In legal terms, the responsibility and competence to achieve such an ambitious goal is shared between the EU and its MSs, where MSs are only allowed to enact binding rules 'to the extent that the Union has not exercised its competence', Art 2(2) TFEU read in conjunction with Arts 4(2)(a) and 26 TFEU.

Especially with regards to the internal market for goods, the removal of technical barriers to trade and the establishment of common rules has been achieved to a large extent. Uniformly applicable to all MSs, such harmonised areas eliminate the risk of divergent national regulations and promote the unrestricted movement of products within the EU. Nevertheless, the EU's goods market remains fragmented: different national standards or product requirements as well as heterogeneous domestic regulations coexist parallel to harmonised EU provisions. This is also applicable for the present case, where the FICR harmonises the realm of food information to consumers but still opens the path for MSs to adopt national rules – which Austria utilised.

3.2. The free movement of goods

Enshrined in Art. 30-36 TFEU, the free movement of goods stimulates economic growth, job creation and welfare in the EU. The intra-EU prohibition of custom duties on imports and exports, including charges having equivalent effect, are fundamental principles which ensure free trade between MSs. Furthermore, by virtue of Article 34 and 35 TFEU, respectively, quantitative restrictions on imports and exports, as well as all measures having equivalent

effect, are forbidden in the EU. Art. 36 TFEU provides for a list of exemptions, which could potentially justify national cross-border trade restrictions, namely: public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. However, such derogations are only permissible under the condition that they are neither of discriminatory nature nor a disguised trade prohibition, thereby aiming to impede domestic protectionist measures bestowing national products more favourable conditions than products from other MSs.

A long history of Union case-law influenced the sphere of the free movement of goods significantly throughout the years. So, as to define the broad concept of 'measures having equivalent effect' more precisely. In its landmark judgment *Dassonville*, the Court held that 'all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions'.[36] For instance, the ECJ declared that the national Irish campaign – *Buy Irish* – which was introduced to encourage the purchase of Irish products in Ireland including the use of a "Guaranteed Irish" symbol, infringes EU law, referring to Art. 34 TFEU. The campaign's discriminatory nature clearly aimed at favouring national products vis-à-vis imported goods, and thereby impeded intra-EU trade.[37]

The *Cassis de Dijon* ruling confirmed and continued the Court's reasoning by, *inter alia,* establishing the concept of 'mutual recognition': products, which were lawfully produced or marketed in one MSs, shall have undistorted market access to any other EU country.[38] This holds true, irrespective of technical differences among MSs and even if a national measure applies uniformly to domestic and non-domestic goods, as it can be more cumbersome for imported products to comply with the rules of the country of destination.[39] Derogations thereof are admissible, if based on one of the grounds of justification of Art. 36 TFEU or on so-called 'mandatory-requirements', developed in the same judgement, which can be understood as non-exhaustive list of values, serving a general interest, on which MSs can rely

36 Case 8/74 *Procureur du Roi v Benoît and Gustave Dassonville* [1974] ECR 837, para 5.
37 Case 249/81 *Commission v Ireland* (Buy Irish) [1982] ECR 04005, paras 20-30.
38 Case 120/78 *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein* (Cassis de Dijon) [1979] ECR 649, paras 14-15.
39 European Commission, *Free movement of goods. Guide to the application of Treaty provisions governing the free movement of goods* (Publ. Off. of the Europ. Union 2010), 12.

to pass a national measure, thereby enlarging the pool of exemptions, provided by Art. 36 TFEU.[40]

The Court somewhat deviated from its broad interpretation of 'measures having equivalent effect', in its *Keck and Mithouard* jurisprudence by excluding selling arrangements from the scope of Art. 34 TFEU, provided that such arrangements effect all traders lawfully and factually in the same manner.[41] To recapitulate: product requirements (e.g. form, size, weight, composition, presentation of goods) are considered as measures having equivalent effect, thus covered by Art. 34 TFEU. Contrary, selling arrangements are only caught by Art. 34 TFEU if the discrimination can be proven by the disadvantaged trade actor, either in law or in fact.[42]

Any trade-restrictive measure must not only be justified but also fulfil the proportionality test, i.e. the measure must be limited to what is absolutely necessary to guarantee the safeguarding of the objective pursued, it must be proportional in regards to the objective and if the envisaged objective could not have been accomplished by less restrictive means.[43] In general, the MS enacting a measure has to deliver the burden of proof, whereas the Commission must provide suitable evidence if it considers the envisaged measure not to be appropriate.[44]

3.3. Regulation on Food Information to Consumers (FICR)

When several food incidents in the 1990s, such as the Bovine spongiform encephalopathy (BSE) crisis or E.coli food poisoning, emerged in the EU, the defaults of the Union's food security system became evident and the call to action inevitable. The Commission reacted by developing a White Paper on Food Safety with the aim of restoring overall confidence in the food industry and to address food insecurities. A holistic and effective food safety framework, encompassing all possible areas related to food, was set up to guarantee a maximum degree of consumer protection.[45] Coming into force in 2002, the General Food Law Regulation laid out the general principles, requirements and procedures of modern Union food and feed law and

40 ibid, 28.
41 Joined Cases C-267/91 and C-268/91 *Keck and Mithouard* [1993] ECR I-6097, paras 16-17.
42 Oliver P and Jarvis M A, *Free movement of goods in the European Community: under articles 28 to 30 of the EC Treaty*' (4th edn, Sweet & Maxwell 2003), 123ff.
43 Case C-319/05 *Commission v Germany* [2007] ECR I-9811, para 87.
44 Case C-55/99 *Commission v France* [2000] ECR I-11499, para 25; Case 251/78 *Denkavit Futtermittel* [1979] ECR 3369, para 24.
45 Holland D & Pope H, *EU Food Law and Policy* (Kluwer, 2004), 1f.

created the European Food Safety Authority (EFSA).[46] Thanks to this newly created Regulation, food policy was significantly elevated in importance, as it now became an independent branch of Union law, serving as bedrock for any future Union legislation in terms of food and feed safety.[47]

Since its entering into force in 2011, the FIC Regulation complements the legal framework of European food and feed provisions by establishing common rules for the labelling and presenting of food products, applicable throughout the EU.[48] Legally based on Art. 114 TFEU, its utmost priority is to balance consumer protection and the associated right to information while ensuring the well-functioning of the internal market.[49] It covers food business operators providing food information to consumers and all foods which are intended for the final consumer.[50] Prior to the adoption of the FICR, only a handful of product categories were covered by specific labelling schemes; the first category being beef and beef products as a direct response to the BSE crisis. The FICR initiated a shift away from those specific, product-focused regulations towards a significant expansion of mandatory origin labelling, encompassing broader product categories.[51]

3.3.1. Relevant definitions

The FICR comprises a set of recurring terms, substantial for the legal analysis of Austria's legislative proposal and in general, to comprehensively understand the content of the FICR.

- Generally speaking, 'food' is defined in Art. 2 of the General Food Law Regulation as 'any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans' thereby including 'drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment'.

---

46 Regulation (EC) 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [2002] OJ L31/1 (General Food Law Regulation).

47 Holland D & Pope H 2004, 3.

48 Ballke C & Kietz M, 'The Origin Declaration of Food and its Primary Ingredients – A Quick Guide on Regulation (EU) No 1169/2011 and Regulation (EU) 2018/775' [2020] 15(4) Eur Food & Feed L Rev 316, 316.

49 FICR, art 1(1).

50 FICR, art 1(3).

51 Sosnitza O, 'Obligatorische Herkunftskennzeichnung im Lebensmittelrecht' [2016] 4 GRUR 347, 347.

– ‘Labelling’ in the context of the FIC Regulation covers any ‘words, particulars, trade marks, brand name, pictorial matter or symbol relating to a food’ which accompanies or refers to the food, pursuant to Art. 2(2)(j) FICR.

– Distinction is made between the terms ‘country of origin’ and ‘place of provenance’. With regard to the first term, Art. 2(3) FICR refers to the Custom Code Regulation[52], which defines in Art. 23 the country of origin, as the country in which the good was obtained or produced in its entirety. In case more than one country is involved in the production process, the country where the last substantial, economically justified step of manufacturing was undertaken shall be decisive for defining the product’s country of origin, Arts. 24-25 Custom Code Regulation. Place of provenance, on the other hand, must be interpreted within the meaning of Art. 2(2)(g) FICR as ‘any place where a food is indicated to come from, and that is not the ‘country of origin’’. In other words, ‘country of origin’ refers to a state, whereas ‘place of provenance’ comprehends smaller territorial areas, such as regions or cities.[53]

  This horizontal, general determination, applicable throughout the FICR, uses the central concepts of the country of origin and place of provenance. Excluded from this assumption are, however, the vertical, product-specific regulations subject to origin labelling regulated in individual secondary acts which precede the FICR and are excluded from its scope.[54] For those product categories, the definition and the associated requirements to indicate the origin can vary. For instance, the labelling of beef meat requires the indication of the country where the animal was born, raised and slaughtered whereas in the case of honey an EU/non-EU indication, without referring to any individual country, is sufficient.[55]

– The term ‘ingredient’ shall be taken to mean ‘any substance or product […], still present in the finished product’ whereas residues are not covered, Art. 2(2)(f) FICR.

---

52 Council Regulation (EEC) 2913/92 of 12 October 1992 establishing the Community Customs Code [1992] L302/1 (Customs Code Regulation).

53 Cf. Sosnitza 2016, 349; Teufer T, ‘Aus der Region – Rechtliche Rahmenbedingungen undFallstricke der Regionalwerbung’ (2015) 10 JVL 69, 72.

54 Sosnitza 2016, 349.

55 See chapter 3.3.3 for further details.

– Within the meaning of Article 2(2)(q) FICR, primary ingredient is the ingredient that represent more than 50% of a food or which is usually associated with the name of the food and for which in most cases a quantitative indication is required. The definition is twofold: besides a first, quantitative component, it has a qualitative component, which will be further examined in chapter 3.3.5.

3.3.2. Mandatory particulars

Arts. 9 and 10 FICR define the mandatory particulars—i.e. the mandatory information which must be indicated on the label of any food. Particulary relevant for the present thesis are the rules on the indication of the country of origin or place of provenance of foods. According to Art. 9(1)(i) FICR, the country of origin or place of provenance must be indicated, but only if and to the extent that Art. 26 of the same Regulation mandatorily foresees it, which is the case in the following circumstances:

Firstly, if without such information the consumer could be misled as to the true country of origin or place of provenance of the food, especially in cases where the information accompanying the food or the label would otherwise suggest that the food itself has a different country of origin or place of provenance (Art. 26(2)(a) FICR).

Secondly, the indication of the origin or place of provenance is mandatory for specific types of meat (Art. 26(2)(b) FICR), conditional upon the adoption of an implementing act. The corresponding Commission Implementing Regulation (EU) 1337/2013 lays down rules for the indication of the country of origin or place of provenance for fresh, chilled, and frozen meat of swine, sheep, goats and poultry and applies as from 1 April 2015.[56]

Based on Art. 5 thereof, the country of rearing and slaughter of swine, sheep, goats and poultry shall be indicated when their meat is supplied to final consumers or mass caterers. If all steps of the production (birth, rearing, slaughter) took place in the same country, food business operators may choose to voluntarily indicate the country of origin (‘Origin’: name of Member State or third country). Food business operators may make use of their right to

56 Commission Implementing Regulation (EU) 1337/2013 of 13 December 2013 laying down rules for the application of Regulation (EU) No 1169/2011 of the European Parliament and of the Council 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 [2013] OJ L335/19.

indicate the origin, especially with regard to their commercial interest of such a voluntary origin labelling, as pointed out in recital 9 of Regulation 1337/2013. Derogations for minced meat and trimmings are provided for in Art. 7 of the same Regulation: for those cases no country-specific indication has to be given, 'EU', 'non-EU' or 'EU and non-EU' indications, depending on where they come from, are sufficient. Regulation 1337/2013 applies to pre-packaged meat only, whereas MSs are free to apply these provisions to non-pre-packed meat.[57]

Additionally, Art. 26(3) establishes, for the first time, rules on the obligation to label the origin of primary ingredients.[58] In cases where the country of origin or place of provenance of a food product is indicated – mandatorily or voluntarily – and differs from that of its primary ingredient, the country of origin or place of provenance of the primary ingredient shall also be given or shall be indicated as being different to that of the food. It follows, that origin information on the country of origin or the place of provenance of the primary ingredient of a food is only mandatory when information about the origin of the food product itself is already provided.[59] The application of the labelling rules for primary ingredients was made dependent on the adoption of an implementing regulation; the resulting Commission Implementing Regulation (EU) 2018/775 regarding the rules for indicating the country of origin or place of provenance of the primary ingredient of a food, sets out the modalities for the application of Article 26(3) of the FICR. The so-called Primary Ingredient Regulation (also referred to as 'PIR') came into force on 29 May 2018 and applies as of 1 April 2020.[60]

Pursuant to Art. 26(5) FICR, the Commission was supposed to submit reports by 13 December 2014 regarding the mandatory indication of the country of origin or place of origin for various other groups of foodstuffs. These groups included, as per Article 26(5): (a) types

57 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, 3.

58 Rieke J W, 'Country of Origin Labelling – Trend zur Renationalisierung des Lebensmittelrechts?' [2019] 5 ZLR 625, 632.

59 Sosnitza O & Meisterernst A, 'C113. Verordnung (EU) Nr. 1169/2011 des Europäischen Parlaments und des Rates betreffend die Information der Verbraucher über Lebensmittel, LMIV' in Sosnitza/Meisterernst (eds), *Lebensmittelrecht Kommentar* (186. Ergänzungslieferung, C. H. Beck 2023), art 26, marginal 29.

60 Commission Implementing Regulation (EU) 2018/775 of 28 May 2018 laying down rules for the application of Article 26(3) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, as regards the rules for indicating the country of origin or place of provenance of the primary ingredient of a food [2018] OJ L131/8.

of meat other than beef and those already covered under Art. 26(2)(b); (b) milk; (c) milk used as an ingredient in dairy products; (d) unprocessed foods; (e) single ingredient products; (f) ingredients that represent more than 50 % of a food.

The corresponding two reports were submitted on 20 May 2015 – the first report on unprocessed foods, single ingredient products and ingredients that represent more than 50% of a food[61] and the second one on milk, milk used as an ingredient in dairy products and types of meat other than beef, swine, sheep, goat and poultry meat.[62] By considering the consumer's right to information, the potential costs and benefits of an EU-wide introduction of mandatory indication of the country of origin or place of provenance for the aforementioned food categories and the impacts on the common market, the research undertaken revealed that new labelling requirements would entail additional costs which consumers would not be ready to accept. Hence, the Commission concluded that voluntary origin labelling adequately consider consumer interests and that there is no need to expand the scope of mandatory origin indications on a EU level. This decision triggered the start of national COOL measures, as proposed by several MSs.[63]

3.3.3. Non-affection clause

Art. 1(4) read in conjunction with Art. 26(1), both FICR, contain a 'non-affection clause', which specifies that labelling requirements provided for in specific Union provisions remain unaffected, in particular Regulation (EU) 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs.[64] The latter sets out the rules for quality schemes on products of protected designation of origin (PDO) and protected geographical indication (PGI). Legally based on Art. 43(2) and Art. 118, both TFEU, those labels pursue agricultural policy purposes, such as the protection and promotion of outstanding characteristics related to the product's geographical origin. As this objective

61 European Commission, '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 unprocessed foods, single ingredient products and ingredients that represent more than 50% of a food' COM (2015) 204 final.

62 European Commission, '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.

63 Sosnitza & Meisterernst 2023, art 26 marginal 55.

64 Regulation (EU) 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [2012] OJ L343/1.

clearly differs from the food labelling mandate of the FIC Regulation, co-existence of both Regulations is legally uncontested.[65]

PDO and PGI labels differ depending on the intensity of the link between the name of product and its specific geographical origin.[66] Every part of the production line must occur in a specific area, so that the product attains a PDO label. An example is the French sparkling wine champagne, which may only contain grapes grown in the French region of Champagne where it was also produced entirely.[67] In contrast, only one step of production has to take place in the specific geographical area for a product having a PGI label.[68] For example, in the case of the ham 'Schwarzwälder Schinken', only the traditional smoking must truly take place in the Schwarzwald region, in order to legally display the according PGI label. [69]

Traditional specialities guaranteed (TSG) are also specifically protected products, however, unlike PDO and PGI labelled goods, they are subject to Art. 26 FICR.[70] The TSG label emphasises traditional methods of production, traditional raw materials or a traditional composition but no actual connection to a geographical area must be given.[71] For instance, thanks to its special preparation process, 'Pizza Napoletana' has certain visual and organoleptic characteristics, rendering this pizza unique vis-à-vis pizzas manufactured under different preparation methods. A 'Pizza Napoletana' can be served in any restaurant worldwide, provided that the special preparation process was followed.[72]

Regulation 1151/2012 is not the only piece of secondary legislation subject to the non-affection clause. Food products, which are already harmonised by virtue of special Union law,

65 Rieke 2019, 629.
66 Tosato A, 'The Protection of Traditional Foods in the EU: Traditional Specialities Guaranteed' [2013] 19 Eur LJ 545, 548.
67 Publication of a communication of approval of a standard amendment to a product specification for a name in the wine sector referred to in Article 17(2) and (3) of Commission Delegated Regulation (EU) 2019/33 2020/C 432/08 (2020/C 432/08) [2020] OJ C432/11.
68 Regulation (EU) 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [2012] OJ L343/1, art. 5.
69 Teufer 2015, 73.
70 Sosnitza & Meisterernst 2023, art 26 marginal 70.
71 Regulation (EU) 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [2012] OJ L343/1, arts 17-19.
72 Publication pursuant to Article 26(2) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs as regards a name of traditional speciality guaranteed (2016/C 176/07) [2016] OJ C176/13.

are also exempt from the scope of Art. 26 FICR.[73] This applies to: beef[74], honey[75], fresh fruits and vegetables[76], olive oil[77], eggs[78], wine[79], fish[80] and organic foods[81]. Those product-specific regulations are equally based on common market regulations which pursue agricultural policy objectives and therefore do not primarily seek to contribute to consumer information aims.[82] Contrary to those vertical, product-specific regulations, the FICR, as a horizontal labelling regulation does not seek to create a common market order but instead prioritises consumer information via the labelling of food products.[83]

In reference to the labelling of beef, Regulation (EC) 1760/2000 of the European Parliament and of the Council of 17 July 2000 established a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products. It requires the mandatory indication of the country where the animal was born, the country/countries where it was fattened and the country of slaughter. If all steps took place in the same (third) country, the indication 'Origin: (name of Member State or third country)' may be chosen on a voluntary basis to simplify labelling (Art. 13 and Recital 26 of Regulation 1760/2000). Within said Regulation, 'beef' is understood as all products falling under the CN codes 0201, 0202, 0206 10 95 and 0206 29 91, i.e. fresh, chilled and frozen carcasses and half-carcasses as well as thick skirt and thin skirt. Beef products are not covered by said Regulation with the only exception of minced meat in Art. 14: the country of preparation (name of the MS or third

73 Cf. Schroeder W, 'Nationale Herkunftsangaben auf Lebensmitteln und die LMIV - Zugleich eine Besprechung von EuGH "Groupe Lactalis".' [2020] 6 ZLR 754, 756; Sosnitza 2016, 349.

74 Regulation (EC) 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) 820/97 [2000] OJ L204/1, art 13.

75 Council Directive 2001/110/EC of 20 December 2001 relating to honey [2002] OJ L10/47, art. 2(4).

76 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) 1037/2001 and (EC) 1234/2007 [2013] OJ L347/671, art. 74, 75(1)(b), 76(1).

77 ibid, art 74, 75(1)(a).

78 ibid, arts 74, 75(1)(f), 78(1)(e).

79 ibid, art 119(1)(d).

80 Regulation (EU) 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) 1184/2006 and (EC) 1224/2009 and repealing Council Regulation (EC) 104/2000 [2013] OJ L 354/1, art. 35(1)(c), 38.

81 Council Regulation (EC) 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) 2092/91 OJ L189/1, art. 24(1)(c).

82 Sosnitza Olaf, 'Gebotene Irreführung und Verbot von Erlaubtem' [2018] 6 ZLR 743, 749 ff.

83 Sosnitza 2016, 352.

country) shall be given, and 'Origin' if the state(s) involved are not the country of preparation.

As for the labelling of eggs, Art. 9 of Implementing Regulation EC 589/2008 on the marketing standard for eggs, stipulates that eggs shall contain a producer code stating the farming method as well as the code for the Member State of registration (e.g. AT for Austria) and an individual code enabling to identify the establishment where the eggs come from. Furthermore, the producer's name and address must be indicated on the transport packing, according to Art. 7(1) of Regulation 589/2008.[84]

3.3.4. Provisions ruling the adoption of national decrees

Last but not least, it is imperative to determine whether and to which extent MSs have competences to adopt national measures in regard to mandatory origin labelling under the FICR. Chapter VI of the FICR introduces the framework for the adoption of national decrees, starting with Art. 38 FICR. Subparagraph 1 states that in areas which are fully harmonised by the FICR, the maintenance and adoption of national regulations is prohibited, unless authorised by Union law and provided that they do not hamper the free movement of goods, including discrimination against foods from other MSs. Pursuant to current legal opinion, full harmonisation within the FICR applies to a range of provisions, including the rules on mandatory food information in chapter IV, complemented by the voluntary information pursuant to Art. 36 FICR and the provisions on fair information practices, stated in Art. 7 FICR, as well as the responsibilities of food business operators, Art. 8 FICR. Moreover, the extended nutrition labelling, Art. 35(1) FICR is likewise to be regarded as fully harmonised.[85]

Furthermore, subparagraph 2 of Art. 38 FICR contains an opening clause, which relativises the strict limitation and opens the possibility for MSs to introduce national measures in areas which are not fully harmonised by the FICR– upon the condition that such measures neither create obstacles to the free movement of goods within internal market nor collide with the provisions of the FICR. This applies 'without prejudice to Article 39', allowing MSs under

84 Regulation (EC) No 589/2008 of 23 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs [2008] OJ L163/6; read in conjunction with arts. 74, 75(1)(f), 78(1)(e) and Annex VII, Part VI, Number 3 of Regulation 1308/2013.

85 Sosnitza & Meisterernst 2023, art 38 marginal 5.

certain conditions to enact national rules in harmonised matters. Hence, Art. 38(2) FICR read in conjunction with Art. 39 FICR sets out the legal framework on which MSs may adopt national measures, complemented by the individual authorisations under Art. 40-44 FICR.[86]

Art. 39 FICR conclusively stipulates the modalities under which MSs may adopt additional mandatory particulars further to those required by the FICR or by specific Union legislation. Paragraph 1 of Art. 39 FICR sets out that such national measures can only be enacted for 'specific types or categories of food' and justified on one of the subsequently listed objective grounds: (a) the protection of public health, (b) the protection of consumers, (c) the prevention of fraud or (d) the protection of industrial and commercial property rights, indications of provenance, registered designations of origin and the prevention of unfair competition. In addition, the measure must be proportionate as to the objective pursued. Moreover, prior to the adoption, the MS in question must communicate the envisaged proposal to the Commission, following the notification requirements of Art. 45 FICR, further laid out in the following chapter.

Paragraph 2 of Art. 39 FICR contains additional obligations which are applicable where the national measure concerns mandatory indications concerning the country of origin or place of provenance of a food. Firstly, there must be a 'proven link between certain qualities of the food and its origin or provenance' and secondly, MSs 'shall provide evidence that the majority of consumers attach significant value to the provision of that information' when informing the Commission about their envisaged national measure. According to current ECJ case law, those two requirements must be scrutinised successively whereas the latter applies complementary and only if such a link can be established in the first place.[87] Furthermore, the required link between origin and quality must be based on objective criteria; consumers subjectively connecting the origin of a food to certain qualities without an already established and fact-based link, is not sufficient.[88]

When referring to the concept of 'certain qualities of a food' the FICR provides no further details which characteristics are qualified for proving that the food in question is superior vis-à-vis food from another geographical location. Hence, the interpretation of this term is within

86 Sosnitza & Meisterernst 2023, art 38 marginal 12.
87 Case C-485/18 *Groupe Lactalis v France* [2020] ECR I-763, paras 37-39.
88 Case C-485/18 *Groupe Lactalis v France* [2020] ECR I-763, paras 44-45.

the discretion of the individual MS.[89] The ECJ, in its Lactalis judgement, held, that the addendum 'certain' [qualities of a food] shall be taken to mean that not all characteristics are eligible but only those 'which distinguish the foods that possess them from similar foods which, due to their different origin or different provenance, do possess them'.[90] While the Court explicitly excludes the resilience of a food to transport as admissible criteria, explaining that this is not a food characteristic specific to a certain origin, it omitted the mentioning of any precise food property or specific criteria that could qualify as 'certain quality'.[91]

The level of harmonisation of mandatory origin indications under Art. 26 FICR was legally questioned and subject to the Lactalis ruling. The Court held that the FICR specifically harmonises, within the meaning of Art. 38(1) FICR, the case where failure to indicate the origin might mislead consumers (Art. 26(1) FICR) and the types of meat covered by Art. 26(2) FICR, but does not specifically harmonise other cases of mandatory origin indications and does not preclude MSs from adopting additional national measures, provided that they comply with the requirements set out in Art. 39 FICR.[92]

Historically and before the entering into force of the FICR, national measures in the area of origin labelling were measured against Art. 34 TFEU only.[93] Nowadays, Art. 39 FICR imposes more stringent rules for the adoption of domestic mandatory origin labelling endeavours. With the Court clarifying some of the most pertinent questions in regards to the national leeway and by buttressing the requirements of Art. 39 FICR, it became evident that no deviation thereof will be acceptable.

3.3.5. Primary Ingredient Regulation (PIR)

Adopted with a delay of 4 years in 2018, the negotiations on the PIR clearly depict the political salience and discrepancy between the MSs and the Commission.[94] Along with the PIR, a notice on the application of the provisions of Art. 26(3) FICR was published by the Commission (hereafter referred to as 'Commission Guidance'), which comprises several questions and answers aimed at clarifying ambiguities related to the application of Art. 26(3)

89 Sosnitza & Meisterernst 2023, art 39, marginal 7.
90 Case C-485/18 *Groupe Lactalis v France* [2020] ECR I-763, paras 48-50.
91 Case C-485/18 *Groupe Lactalis v France* [2020] ECR I-763, para 51.
92 Case C-485/18 *Groupe Lactalis v France* [2020] ECR I-763, paras 26-29.
93 Case 249/81 *Commission v Ireland* (Buy Irish) [1982] ECR 04005, para 25.
94 Rieke 2019, 633.

FICR.[95] However, contrary to the PIR itself, the Commission's Guidance has no legally binding effect.[96]

The PIR sets out the rules for the application of Art. 26(3) FICR, i.e. when the country of origin or the place of provenance of a food is given (e.g. via pictograms, symbols, explanations) – voluntarily or mandatorily – but differs from that of the primary ingredient. If the origin of the food is not indicated, the PIR consequently does not apply. The same holds true for a number of specific secondary legal acts, set forth in Art. 1(2) PIR, such as the geographical indications, protected under Regulation (EU) No 1151/2012, or the food categories covered by vertical product-specific regulations.

Art. 2(a) PIR establishes a list of geographical areas, from which food business operators can choose to indicate the country of origin or place of provenance of the primary ingredient. The options set forth are:

- (i) 'EU', 'non-EU' or 'EU and non-EU';
- (ii) Region, or any other geographical area either within several Member States or within third countries, if defined as such under public international law or well understood by normally informed average consumers;
- (iii) FAO Fishing area, or sea or freshwater body if defined as such under international law or well understood by normally informed average consumers;
- (iv) Member State(s) or third country(ies); or (v) Region, or any other geographical area within a Member State or within a third country, which is well understood by normally informed average consumers; or
- (vi) The country of origin or place of provenance in accordance with specific Union provisions applicable for the primary ingredient(s) as such;

Art. 2(b) PIR also allows for a simple declaration, indicating that the primary ingredient(s) does/do not originate from the country of origin or place of provenance of the food itself.

95 European Commission, Commission Notice on the application of the provisions of Article 26(3) of Regulation (EU) No 1169/2011 [2020], C 32/01 (Commission Guidance).
96 ibid, point 1.

The Commission Guidance further clarifies how the primary ingredient shall be identified. It is worth repeating that the primary ingredient can result from its amount (more than 50% of the respective food) or from how it is perceived by consumers, according to Art. 2(2)(q) FICR. According to those Guidelines, the first, quantitative classification covers single ingredients but also primary ingredients, which themselves are the result of a combination of more than one ingredient, referred to as compound ingredients. Whether individual ingredients are to be combined into a compound ingredient, is to be determined by having regard to characteristics of the food as well as consumer expectations and perceptions[97], whereby the quantitative indication of ingredients, defined in Art. 22(1) FICR can serve as guideline.[98] Pursuant to point 3.4 of the Guidance, single ingredient foods are as well caught by the scope of Art. 26(3) FICR.

The second, qualitative definition catches those cases where the primary ingredient is associated with by consumers, even though it might not meet the 50% threshold. For example, water in a vegetable soup is only of minor interest for consumers, whereas the ingredient which consumers attach with the name of the food – the vegetable(s) contained in the soup – should be indicated, satisfying consumer's interest in information.[99] Following this line of reasoning, the Commission declared that a food can have more than two primary ingredients; in this case, the origin for all the primary ingredients must be indicated.[100] Likewise, a foodstuff can have no primary ingredient at all, if neither the quantitative nor the qualitative requirement is fulfilled.[101] A specific example would be cereals, having no ingredient that amounts over 50% and no information that could lead consumers to associate the product with a primary ingredient.[102]

Pursuant to common legal opinion, the PIR regulates the scope of application for cases which fall under Art. 26(3) in a conclusive manner – national measures which deviate therefrom are not permitted. Accordingly, the origin indication of primary ingredients is without exception to be made in conformity with the list of geographical areas, as set forth in Art. 2 PIR.[103]

97 ibid, point 3.6.
98 Sosnitza & Meisterernst 2023, art 26 marginal 35.
99 ibid, art 26 marginals 37-37.
100 Commission Guidance, point 3.2.
101 ibid, point 3.3.
102 Ballke & Kietz 2020, 320.
103 Obwexer 2020, 17.

3.3.6. Notification procedures under the FICR and Directive 2015/1535

Before adopting any new national decree, MSs are under the obligation to notify their envisaged measure as a draft to the Commission. EU law provides for two formal procedures for this purpose, namely the information procedure in the field of standards and technical regulations under Directive 2015/1535[104], with an overall purpose to prevent any barrier within the internal market at a technical level and the notification procedure enshrined in Art. 45 FICR, prioritising the right to information for consumers.[105]

Art. 45(5) FICR defines the modalities for the coexistence between the horizontally applicable notification procedure under Directive 2015/1535 and the vertically applicable notification procedure under the FICR. The latter constitutes a derogation of the former and merely applies when explicitly mentioned. Within the framework of the FICR, so far only Art. 39(1) refers to the notification procedure of Art. 45.[106] It follows that national measures, which are justified on one of the grounds described in Art. 39(1), namely (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 trigger the notification procedure of Art. 45 FICR.

Reading Art. 39(1) in conjunction with Art. 45(1) FICR, any MS seeking to adopt additional mandatory particulars must notify the Commission and the other MSs in advance and provide reasons to justify its envisaged measure. If considered useful, or when requested by another MS, the Commission may consult the Standing Committee on the Food Chain and Animal Health, pursuant to Art. 45(2) FICR.

After the notification, a stillstand period of three months is set. Consequently, MSs can only adopt an envisaged measure three months after prior notification and provided that the Commission does not issue a negative opinion. If the Commission does raise objections within the stillstand period, it can activate an examination procedure (provided for in Art.

104 Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification) [2015] OJ L241/1 (Directive 2015/1535).

105 Wennerberg F & Nyman J, Made in EU ¬ How country-of-origin labelling affects the internal market (Publication of The National Board of Trade Sweden 2020), 18ff.

106 Sosnitza & Meisterernst 2023, art 26 marginals 1-3.

48(2) FICR) to assess if the envisaged measure can be implemented upon modifications. This examination procedure can also be triggered upon request by a MS.[107] Rationale behind such an early notification system is the possibility to discuss any discrepancies beforehand which also diminishes the likelihood of cumbersome ex-post infringement proceedings under Art. 258 TFEU.

The legal framework of the procedure pursuant to Directive 2015/1535 follows a similar mechanism: Any envisaged technical regulation must equally be notified to the Commission including a statement of justification. The Commission then informs the other MSs of the draft measure.[108] A stillstand period of three months is likewise foreseen, during which the notifying MSs is not authorised to apply or put into effect the planed technical regulation.[109]

Arguably, the biggest difference between both notifications lies within the transparency modalities. Contrary to the procedure stipulated by the FICR, any technical regulation is publicly accessible to anyone who seeks to acquire information about the respective draft measure through to the Technical Regulation Information System (TRIS) website. As each notification is additionally translated into every official EU language, the information procedure is living up to a high degree of transparency.

Directive 2015/1535 enables, via the TRIS website, a peer-review system, whereby not only the Commission and the MSs can express their opinion vis-à-vis the planned notification, but also stakeholders, such as economic actors. This allows the submission of relevant input from the industry which can highlight different aspects and limits the risk of approving measures that are in violation of EU law. Moreover, if a sharper form of reaction, a so-called 'detailed opinion', is submitted by either the Commission or a MS having doubts as to the compatibility of the envisaged measures in regard to the integrity of free movement of goods, the stillstand period will be extended to three more months, stretching it to a total of six months.[110]

The notification procedure of Art. 45 FICR does not foresee any public dialogue between Commission, MSs and/or stakeholders and thus depicts *lacunes* with regard to review and

107 FICR, arts 45(3) and (4).
108 Directive 2015/1535, arts 4 and 5.
109 Directive 2015/1535, art 6.
110 ibid.

transparency. Only a brief summary of the proposals, which were discussed within the Standing Committee on Plants, Animals, Food and Feed ('PAFF Committee'), is available online. Those summaries provide an overview of the motives brought forward by the notifying MSs and note if there were any oppositions raised by other MSs without naming countries or specifying any further details.[111]

The interplay between the two notification procedures might be legally clearly distinguishable, however it proves to be tricky in practice. Previous national COOL measures have either been submitted under one of the procedures or both – depending on the proposal's content. For instance, if technical regulations, such as quality schemes, are part of the envisaged measure, both procedures apply. In case of double notification, however, it is possible that the respective measure is approved under one procedure and at the same time faces objections via the other procedure.[112] Different departments responsible for the handling of such national measures are the root cause for the conflicting outcomes: The Commission's Directorate-General for Health and Food Safety (DG Sante) is responsible for processing notifications under the FICR while notifications pursuant to Directive 2015/1535 are within the prerogative of the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW).

Noteworthy are as well the potential consequences of non-notification of an envisaged measure: According to the FICR, non-notification has no sanctuary consequence, as opposed to Directive 2015/1535 where the failure to notify a measure could lead to the inapplicability of national law.[113]

3.4. Overview: Requirements for the introduction of national COOL measures

To briefly review the aforementioned requirements which presuppose the introduction of national COOL measures, the following must be noted: Art. 9 FICR read in conjunction with Art. 26 FICR define the cases where the indication of origin of a food is mandatory. That is the case when otherwise the consumer might be misled as to the true origin of a food (Art. 26(2)(a) FICR); for certain types of meat (Art. 26(2)(b) FICR); or where the origin of a food

111 The agenda and summaries of the meetings of the PAFF Commitee can be accessed under the following link: https://food.ec.europa.eu/horizontal-topics/committees/paff-committees/general-food-law-paff_en

112 Wennerberg & Nyman 2020, 18.

113 Sosnitza & Meisterernst 2023, art 45 marginal 2; Wennerberg & Nyman 2020, 19ff.

is indicated, however, is not congruent with that of its primary ingredient, (Art. 26(3) FICR in conjunction with the PIR).

Art. 38 FICR introduces the chapter for the adoption of national measures: Art 38(1) sets out the modalities for areas specifically harmonised by the FICR and states that MSs may not adopt nor maintain national measures, unless authorised by Union law and under the condition that they do not distort the free movement of goods. Art. 38(2) in turn specifies the rules for the adoption of national laws in areas not fully harmonised by the FICR by stipulating that they shall not hamper the free movement of goods.

Moreover, Art. 39(1) FICR sets out the prerequisites for MSs seeking to adopt mandatory particulars that go beyond those established by the means of Art. 9(1) and Art. 10 FICR.

1. Such measures can only be adopted for specific types or categories of food; and
2. they, must be justified on of the grounds of justification laid down in Art. 39(1)(a)-(d) FICR.

If the measure in question concerns mandatory indications of the country of origin or place of provenance, Art. 39(2) FICR foresees two additional requirements, namely:

3. The existence of a proven link between certain qualities of the food in relation to its origin or provenance and;
4. subsequently, as complement to the objectively established link, the evidence that the majority of consumers attach substantial value to the provision of that information.

Furthermore, prior to adoption, MSs shall notify their envisaged measures to the Commission, pursuant to the notification procedure, as set forth in Art. 45 FICR.

4. Previous COOL measures

A handful of MSs introduced COOL measures under the FICR. Unfortunately, due to the aforementioned lack of transparency, only those measures notified under Directive 2015/1535 are easily tracible as they are listed on the publicly accessible TRIS website. Content and outcome of proposals, which have been notified under the notification procedure of Art. 45 FICR and which were not adopted by the notifying MS must be reconstruct by means of secondary literature, such as research or newspaper articles. Against this background, it must be noted that the following assessment does not claim to be exhaustive, as sufficient information was not available for each draft proposal.

In the following, all national labelling measures, which show a substantive reference to the Austrian draft decree, i.e. contain provisions on the labelling of milk, meat and or eggs, will be laid out. There are eleven comparable proposals, notified or adopted between 2015 and 2020 by eight different MSs. The proposals are listed in chronological order, according to the date of notification or entering into force of the respective country's first initiative. The French decree on milk and milk products and the associated Lactalis judgment will be dealt with at the end of the analysis.

4.1. Lithuania

Already in 2015, Lithuania notified a COOL measure for milk and dairy products simultaneously under the procedure of Directive 2015/1535 (TRIS number 2015/465/LT) as well as under the FICR. The Commission decided to assess the measure solely under the FICR where it did not voice a negative comment which led to the adoption of the envisaged measure in 2016 for a limited period. Under Directive 2015/1535, however, several MSs expressed their concerns vis-à-vis the proposal's alignment with Union law, and especially its conformity with Art. 34 TFEU.[114]

The decree requires the indication of milk and milk used in dairy products by specifying the MS or third country where the milk was obtained: 'Country of origin of milk: name of Member State or third country'. If obtained from more than one country, the respective milk

114 Wennerberg & Nyman 2020, 13.

processing operator can either indicate all countries or use the terms 'EU', 'non-EU' or 'EU and non-EU' to declare the origin of the milk.[115]

Lithuania argued that due to small-scale farming and better husbandry conditions, the milk obtained within their territory has a higher biological value thanks to the composition of fatty acids. A laboratory could prove this superior milk quality in comparison with milk from other MSs. In addition, Lithuania explained the necessity of the measure by pointing out that it would contribute to support small dairy farms and hence stimulate regional development.[116] Moreover, a study among Lithuanian consumers could substantiate that knowing the origin of milk and dairy products is important for 67% of the respondents, thereby serving to prove that consumers attach high value to knowing the origin of milk and milk products.[117]

4.2. Romania

By virtue of Law 88/2016 Romania sought to introduce mandatory indications for the labelling of milk and dairy products in May 2016. Although adopted, it was not enforced due to an infringement proceeding initiated by the Commission. Romania failed to notify the Commission priorly and was additionally confronted with negative substantive concerns, voiced by the Commission and several MSs, of both procedural nature and in terms of content. Some of the major deficits were non-compliance with the notification procedure before adoption, the incompatibility of some provisions with the FICR, the failure to include a trial period or the insufficient justification to establish the necessary link between origin and quality.

Consequently, the measure was amended and adopted in June 2017 by Law 192/2017 which entered into force on 1 January 2018. The most interesting features therein is that for milk products, merely the country of origin or the place of provenance of milk accounting for the highest percentage must be indicated (and not all other countries). If food operators use milk, that was wholly obtained from Romanian farmers, they may label their product as 'Product of

115 Law n. 4492/2017, 18 December 2017, Distribution and marketing of fresh and perishable agricultural products and other provisions. (Government Gazette 156/A/18-10-2017) <https://www.e-nomothesia.gr/kat-agoranomikes-diatakseis/nomos-4492-2017-fek-156a-18-10-2017.html> accessed 13 September 2023, art 7.

116 Wennerberg & Nyman 2020, 13.

117 Eičaitė O, 'Lithuanian Consumer's Views on Country of Origin Labelling for Milk' [2016] 16(4) Scientific Papers Series Management, Economic Engineering in Agriculture and Rural Development 97, 98ff.

Romania'. Despite the failure to communicate the draft decree to the Commission, Romania neither communicate the reviewed proposal to the Commission prior to adoption.[118]

4.3. Italy

With the notification of five COOL decrees, Italy is the front runner in the realm of origin labelling. The Italian decrees concern the following food products including the year when the according decree was notified or announced to be adopted: milk and milk products (2016); durum wheat for semolina pasta (2017); rice (2017); tinned tomatoes, tomato concentrate and sauces (2017); processed pork meat (2020).[119] In light of the present thesis' subject matter only the Italian decree on milk and milk products as well as on processed pork meat will be taken into account.

According to the interministerial decree of 9 December 2016, milk and milk products must contain (1) the indication of the country of milking as well as (2) the country of processing or packing. If the milk, or milk used as an ingredient in dairy products, has been obtained from one country (milked and packaged or processed) the following indication is possible: 'Origin of the milk': name of the country. In case several EU countries were involved in the milking or in the packaging/processing, the following indications shall be given: 'milk from EU countries' and 'milk packed or processed in EU countries'. In case of the involvement of non-EU countries the labelling shall be given as follows: 'milk from non-EU countries' for the milking, 'milk packed or processed in non-EU countries' for packaging or processing operations.[120]

The second decree of the Ministry of Agriculture, published on 06 August 2020, requires the indication of the origin of processed pork meat by giving the country of birth, of breeding and of slaughter. If all steps occurred in one single country, the indication: 'Origin: (name of country)' is admissible, otherwise the individual countries of respectively birth, breeding and slaughter must be indicated or if several EU/non-EU countries are referred to, the country-

118 Constantinescu O & Barbarasa T 'Romania's COOL Experiment' (2018) 13 Eur Food & Feed L Rev 153, 153f.

119 Rusconi G & Cozzolino G, 'Country of Origin Labelling of Food Products' [2021] 16 Eur Food & Feed L Rev 112, 114.

120 Decreto 9 dicembre 2016 Indicazione dell'origine in etichetta della materia prima per il latte e i prodotti lattieri caseari, in attuazione del regolamento (UE) n 1169/2011, relativo alla fornitura di informazioni sugli alimenti ai consumatori. (17A00291) (GU Serie Generale n.15 del 19 January 2017) <pdf (gazzettaufficiale.it)> accessed 14 September 2023, arts 2-3.

specific indication may be replaced by the more general terms 'EU', 'non-EU' and 'EU or non-EU', as appropriate.[121]

Initially, both decrees were introduced on an experimental basis with a limited application period of two years after publication in the Official Gazette. However, the decree on milk was supposed to lose validity as soon as the PIR comes into force.[122] Despite the PIR applying as of 1 April 2020, the Italian decree on milk was upheld and, in addition, prolonged several times. Both decrees are now set to endure until 31 December 2023. As reported in the Italian consumer protection magazine "Il Salvagente" and according to the Italian agriculture association "Coldiretti" the PIR is too flexible, leaving room for misunderstandings, whereas the Italian decree on milk is of a more precise nature and hence better suited to inform customers appropriately about the origin of the foods in question.[123] Additionally, out of the five decrees, only the one on processed pork meat was ex-ante notified to the Commission via the Information Procedure.[124]

It follows that the decree on milk and on processed pork meat came into force, including the extension of their respective validity, despite the failure to comply with Union requirements, such as the disregard of the PIR or the neglect to notify the Commission prior to adoption, which has been disregarded in the case of milk.[125]

4.4. Finland

The Finish government proposed two COOL measures, the first one, Regulation 218/2017 coming into force on 5 April 2017 introduces the obligation to label the country of origin of

121 Decreto 6 agosto 2020 Disposizioni per l'indicazione obbligatoria del luogo di provenienza nell'etichetta delle carni suine trasformate. (20A04874) (GU Serie Generale n.230 of 16 September 2020) <pdf (gazzettaufficiale.it)> accessed 14 September 2023, art 4.

122 Decreto 9 dicembre 2016 Indicazione dell'origine in etichetta della materia prima per il latte e i prodotti lattieri caseari, in attuazione del regolamento (UE) n 1169/2011, relativo alla fornitura di informazioni sugli alimenti ai consumatori. (17A00291) (GU Serie Generale n.15 del 19 January 2017) <pdf (gazzettaufficiale.it)> accessed 14 September 2023, art 7.

123 Corvino V, 'Origine in etichetta, c'è il decreto che proroga l'obbligo' (Il Salvagente, 30 December 2021) <https://ilsalvagente.it/2021/12/30/origine-in-etichetta-ce-il-decreto-che-proroga-lobbligo/> accessed 27 July 2023.

124 Dongo D, 'Decrees of origin for pasta, rice, milk, tomato, pork. Theoretical extension to 31.12.22' (Great Italian Food Trade, 05 July 2020) <Decrees of origin for pasta, rice, milk, tomato, pork. Theoretical extension to 31.12.22 - Gift (greatitalianfoodtrade.it)> accessed 11 July 2023.

125 Rusconi & Cozzolino 2020.

milk as well as of milk and meat used as an ingredient of prepacked foods intended for final consumers or mass caterers.

As for meat, the country of rearing and the country of slaughter for beef, pork, lamb, goat and poultry meat shall be indicated.[126] If meat used as ingredient in a food stems from animals born, raised and slaughtered in one country, the term 'Origin: (name of EU or non-EU country)' can be used. If the meat is obtained from animals reared and slaughtered in more than one country, the food business operator may choose to either indicate all countries involved or use the one of the following declarations, as appropriate: 'several EU countries', 'several non-EU countries' or 'several EU and non-EU countries'.[127]

When it comes to milk, the country of milking shall be given by either indicating the respective (EU) country, or, if the milk was collected from more than one country, by listing all countries involved or by using the wording, as appropriate: 'several EU countries', 'several non-EU countries' or 'several EU and non-EU countries'. If the milk was collected, packaged and processed in one single country, the indication: 'Origin: (name of EU or non-EU country)' may be used.[128]The Regulation entered into force on 1 June 2017 with a limited validity period until 31 May 2019 but was extended several times and is currently valid until 31 December 2023.[129]

The second measure, Regulation 154/2019, concerns the labelling of the country of origin of meat used as ingredient in meals served at restaurants. Initially, the Finish authorities pursued to label the origin of meat and fish and justified the measure on Finish standards of food safety and animal welfare. The Commission voiced a negative opinion as it did not deem the explanation sufficient to prove the link between food qualities and their origin. Finland reviewed the proposal and excluded fish, as well as horse, reindeer, and game meat from its scope of application. Thereupon, the Commission greenlighted the proposal, based on the

126 Decree n. 218/2017of the Ministry of Agriculture and Forestry on the indication of the country of origin of certain foodstuffs. (FINLEX, 218/2017, 5 April 2017) <https://www.finlex.fi/fi/laki/alkup/2017/20170218#Pidm45053758502720> accessed 13 September 2023, Annex A.

127 ibid, Section 4.

128 ibid, Section 5.

129 Decree n. 885/2021 of the Ministry of Agriculture and Forestry amending section 8 of the Decree of the Ministry of Agriculture and Forestry on the indication of the country of origin of certain foodstuffs. (FINLEX, 885/2021, 15 December 2021) <Maa- ja metsätalousministeriön asetus eräiden… 218/2017 - Säädökset alkuperäisinä - FINLEX ®> accessed 14 September 2023, Section 8.

argument, that since the decree only comprised non-packaged food, the free movement of goods within the common market would be hardly impacted.[130]

The Finish Regulation requires, *inter alia*, the indication of the origin of beef, swine, sheep, goat, and poultry meat used as an ingredient. The decisive factor to define the country of origin, is the country where the respective animal was reared. The decree refers to Regulation 1760/200 for beef and Regulation 1337/2013 for swine, sheep, goat and poultry meat for guidance on the rearing modalities. The country of origin (in that case the country of rearing) can be stated by indicating the specific country: 'Country of origin: (name of an EU country or a non-EU country)' or in the absence of such information, by using the broader terms 'several EU countries', 'several non-EU countries' or 'several EU and non-EU countries', as appropriate. This information shall be given in writing at the serving point before making the decision on which meal to buy.[131] The Decree 154/2019 entered into force on 1 May 2019 and was extended, with a current validity until 30 April 2025.[132]

4.5. Portugal

Portugal published on 09 June 2017 its COOL measure on the mandatory origin indication of milk and milk used as an ingredient in dairy products. It requires the indication of the country of milking as well as the country of processing, providing for similar geographic indications as the other decrees – 'Origin: name of the country' (if both steps occurred in the same country), or the broader terms 'EU', 'non-EU' or 'EU and non-EU' – depending on the product's origin.[133] Those provisions came into force on 1 July 2017 for a trial period of two years and were intended to cease its applicability with the taking into effect of harmonised EU legislation.[134]

130 Wennerberg & Nyman 2020, 15.

131 Decree n. 154/2019 of the Ministry of Agriculture and Forestry amending section 7a of the Decree of the on the provision of food information to consumers. (FINLEX, 154/2019, 22 January 2019) <https://www.finlex.fi/fi/laki/ajantasa/2014/20140834#P7a> accessed 14 September 2023, Section 7a.

132 Decree n. 197/2023 of the Ministry of Agriculture and Forestry amending section 8a of the Decree of the Ministry of Agriculture and Forestry on the provision of food information to consumers and the entry into force provision (FINLEX, 197/2023, 15 February 2023) <Decree of the Ministry of Agriculture and Forestry... 197/2023 - Original statutes - FINLEX ®> accessed 14 September 2023, Section 8a.

133 Decreto lei n. 62/2017, de 9 de junho, (Diário da República n. 112/2017, Série I of 9 June 2017) <https://dre.pt/dre/detalhe/decreto-lei/62-2017-107495709> accessed on 13 September 2023, art 4.

134 ibid, 31, 32, 35.

4.6. Spain

Spain's – so far – only national origin labelling measure relates to milk and dairy products, which has been notified on 5 September 2017 via Directive 2015/1535 (TRIS number 2017/421/E) as well as under the notification procedure of the FICR. The Spanish case exemplifies the ambiguity and incoherence of origin labelling in the EU between the two applicable notification procedures: whereas the Commission (DG Santé) did not react to the proposal under the FICR procedure, MSs as well as the Commission's DG Grow raised concerns regarding the measure's potential negative effect on the internal market under the procedure of Directive 2015/1535.[135]

Nevertheless, the decree entered into force on 22 January 2019 for an initial trial period of two years. It foresees the indication of the country of milking as well as processing for milk and dairy products accounting for more than 50 percent, expressed in weight, of a product. The geographic indication can either occur by naming the MS(s) or third countries where milking and processing took place or by one of the following indications: 'EU' or 'outside the EU' or 'EU and outside the EU'. If both, milking and processing, occurred in one country, the indication 'Origin: (country of milking and processing)' is admissible. If the country of origin is Spain, the geographic indication must say 'Origin: Spain' and cannot be replaced by the more generic expression 'EU'.[136]

The decree is ceased to apply if the Commission introduces an implementing act, within the meaning of Art. 26 FICR relating to labelling requirements of milk and dairy products. Now the PIR does not directly target labelling provisions for milk and dairy products, however, established provisions for the labelling of primary ingredients in general. The geographical indications, provided for in the PIR, diverge from those admissible under the Spanish decree. Nevertheless, the validity of Spain's decree was extended several times, and according to the last update of 29 December 2022, will continue to be valid until 22 January 2025.[137]

135 Wennerberg & Nyman 2020, 18.

136 Real Decreto 1181/2018, de 21 de septiembre, relativo a la indicación del origen de la leche utilizada como ingrediente en el etiquetado de la leche y los productos lácteos. (A-2018-12837) (Boletín Oficial del Estado núm. 230 of 22 September 2018) <https://www.boe.es/eli/es/rd/2018/09/21/1181/con> accessed 7 Sep 2023, art 3.

137 ibid, sixth additional provision.

4.7. Greece

On 12 October 2017, the Greek Government adopted a COOL decree, which foresees the mandatory origin labelling of milk and dairy products, whether prepacked or not. It prescribes the obligation to indicate the country of milking, processing and packing. The triad of information can be replaced by the term 'Origin: name of country' if all steps occurred in one single country, otherwise, if taking place in several countries, 'Origin: EU' or 'Origin: non-EU' is permissible, depending on where the three procedural steps took place. The decree was supposed to come into force when published in the Official Gazette on 12 October 2017 and designed for a test period of 30 months.[138] Notified under the FICR, any further information related to the decree remain inaccessible.

4.8. France including a summary of the Lactalis judgment

Besides its well-known decree on origin labelling of milk and milk used in dairy products, France adopted in 2019 another labelling measure, which concerns the labelling of beef, pig, sheep and poultry meat in establishments offering meals.

According to the latter, the origin or provenance of beef meat shall be indicated by stating the country or countries of birth, breeding and slaughter and for pig, sheep and poultry meat by indicating the country of breeding and slaughter. If birth, rearing and slaughter from which the meat is derived took place in one country, the indication 'Origin: (name of country)' is admissible. These particulars shall be given to consumers in written format, for instance, on cards or menus.[139] The decree was notified to the Commission via the Information Procedure (TRIS notification 2019/564/F) and is currently valid until 29 February 2024.[140]

The second French decree, number 2016-1137, introduced the indication of the country of origin for milk, dairy products and meat (beef, pork, sheep, goat and poultry meat) in pre-

138 Law n. 4492/2017, 18 December 2017, Distribution and marketing of fresh and perishable agricultural products and other provisions. (Government Gazette 156/A/18-10-2017) <https://www.e-nomothesia.gr/kat-agoranomikes-diatakseis/nomos-4492-2017-fek-156a-18-10-2017.html> accessed 13 September 2023.

139 Décret n. 2022-65 du 26 janvier 2022 modifiant le décret n° 2002-1465 du 17 décembre 2002 relatif à l'étiquetage des viandes bovines dans les établissements de restauration (JORF of 26 January 2022, text n. 7) <Décret n° 2022-65 du 26 janvier 2022 modifiant le décret n° 2002-1465 du 17 décembre 2002 relatif à l'étiquetage des viandes bovines dans les établissements de restauration - Légifrance (legifrance.gouv.fr)> accessed 14 September 2023, art 2.

140 ibid, art 5.

packaged and processed foods. A threshold of 50% for milk and dairy products, and 8% of meat was set; below this threshold, the origin labelling was not mandatory. The decree required the labelling of the country of birth, rearing and slaughtering of the aforementioned types of meat by stating the individual country, and allowed for an origin-declaration: 'Origin: name of country', provided that all steps were performed in one single country. If several countries were involved, the indication: 'Origin: 'EU', 'non-EU' or 'EU and non-EU', as appropriate, could be included on the label.[141] Similarly, the country of milk collection, and that of its processing and/or packaging, had to be given for milk and milk used in dairy products, whereas the same geographical options as for the indication of meat applied.[142]

Notified under the FICR, the Commission approved the French decree for a trial period of two years despite several inconsistencies[143]and harsh criticism raised by the agro-food industry.[144] The decree came into force on 1 July 2017 and was ceased to apply until 31 December 2021. Belgium claimed that already the announcement of the measures negatively impacted trade flows between the two neighbouring countries resulting in a decline of Belgian exports to France.[145]

The decree became repealed by the French Decision number 404651 of 10 March 2021, following the ECJ judgement *Groupe Lactalis v France* of 1 October 2020. In the judgement, the referring French court requested a preliminary ruling concerning the interpretation of Arts. 26, 38 and 39 FICR following a dispute between the French diary company Groupe Lactalis and the French government as to the compliance of the Frech Decree 2016-1137 (see above) with said Articles.[146] As parts of the judgement have already been addressed, only a brief summary will be provided below.

---

141 Décret n. 2016-1137 du 19 août 2016 relatif à l'indication de l'origine du lait et du lait et des viandes utilisés en tant qu'ingrédient (JORF of 21 August 2016, texte n.18) <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000033053008> accessed 13 September 2023, arts 2-4.

142 ibid, arts 3-4.

143 See for instance, Coutrelis N & Rihouey-Robini L, 'Focus on the French Experiment to Indicate the Origin of Milk and Meat on Some Food Products Labeling' (2017) 12 Eur Food & Feed L Rev 57, 58.

144 A summary of the raised opposition is provided by: Carreno I, Dolle T & Rovnov Y, 'Country of Origin Labelling on the Rise in EU Member States - An Analysis under EU Law and the EU's International Trade Obligations' [2017] 8 Eur J Risk Reg 414, 418.

145 Carreno I & Dolle T, 'A Myriad of EU Member States' Measures on Mandatory Country of Origin Labelling (COOL) of Food Compromise the EU Internal Market' [2017] 8 Eur J Risk Reg 779, 785.

146 Case C-485/18 *Groupe Lactalis v France* [2020] ECR I-763, arts 1-2.

The first question of the judgement referred to the level of harmonisation of Art. 26 FICR and whether this Article must be interpreted as specifically harmonised within the meaning of Art. 38(1) and if MSs are even entitled to adopt national measures containing additional mandatory particulars on the basis of Art. 39 FICR. The Court held that the indication of the country of origin or place of provenance in Art. 26 FICR specifically harmonised the situation where failure to indicate this might mislead consumers and the meat types referred to in Art. 26(2)(b) FICR; other cases are not specifically harmonised.[147] It further maintained that MS are free to adopt additional national particulars, as long as they are 'additional' to those set out in the FICR itself, in line with the objectives pursued by the FICR and comply with the requirements set out in Art. 39(2) FICR.[148]

The answer to the second question clarified the interpretation of Art. 39 and explained that the conditions of said Article are to be met consecutively, that is to say, first and only in the event that there is a proven link between certain qualities of the food and its origin or place of provenance, the MS concerned must provide evidence that a majority of consumers attach value to the provision of that information. The proof complements the existence of the link at a subsequent stage but cannot replace it in any way as the existence of the link must be assessed on neutral and objective criteria to avoid an examination solely based on subjective associations of consumers.[149]

The third and fourth questions relate to the concept of 'qualities of a food'.[150] Only those qualities that distinguish the food from similar foods, that do not possess them due to their different origin, are suitable to constitute the link between the food and its origin. The resilience of a food to transport and the risk of deterioration during transport does not qualify as 'certain quality' given that resilience cannot be linked to one specific origin but can be possessed by similar foods from elsewhere.[151]

147 Case C-485/18 *Groupe Lactalis v France* [2020] ECR I-763, art 28.
148 Case C-485/18 *Groupe Lactalis v France* [2020] ECR I-763, arts 29-33.
149 Case C-485/18 Groupe Lactalis v France [2020] ECR I-763, arts 36-40 and 46.
150 For further details see chapter 3.3.4 where this question has been carefully assessed.
151 Case C-485/18 Groupe Lactalis v France [2020] ECR I-763, arts 49-51.

4.9. Summary of national COOL measures

As previously analysed, introducing a national COOL measure is an extremely delicate undertaking, due to the strict requirements, set out in the FICR. With the Court's rigid interpretation, the chances of success for further national COOL measures – such as Austria's legislative proposal shrunk even more despite the consumers' continuous call for further mandatory origin labelling.

Learning from the previous measure, it became evident that unsurprisingly the exhaustive compliance with applicable Union legislation is the bedrock for a successful proposal. As seen in the example of Romania, severe negligence, such as the absence of prior notification to the Commission, will lead to an immediate rejection of any proposal. Apart from lacking notification the most common disobedience with EU law is the lack of a convincing and proven link between quality and origin (e.g. Finland).

Nevertheless, the examples above also highlight the incoherence of MS's domestic labelling measures. As outlined above, some national measures, despite being in breach with Union law and although having received critical opinions either via the TRIS platform or within the PAFF Committee, are still upheld or were approved in the first place.[152] For instance, the geographical indications as set out in the Spanish decree are not in accordance with those of the PIR and yet, its validity is extended until 22 January 2025. Equally questionable is for example the justification brought forward by Lithuania which seems to be discriminatory in

152 Cf. the accompanying reports of the Standing Committee on PAFF, all accessed on 29 April 2023: European Commission, 'Summary Report of the Standing Committee on Plants, Animals, Food and Feed Held in Brussels on 13 September 2016 - 14 September 2016' (sante.ddg2.g.5(2016)5835849, 13 – 14 September 2016) <https://food.ec.europa.eu/system/files/2016-10/reg-com_gfl_20160913_sum.pdf>;
European Commission, 'Summary Report of the Standing Committee on Plants, Animals, Food and Feed Held in Brussels on 10 October 2016 (sante.ddg2.g.5(2016)6727863, 10 October 2016) <https://food.ec.europa.eu/system/files/2017-04/reg-com_gfl_20161010_sum.pdf>;
European Commission, 'Standing Committee on Plants, Animals, Food and Feed Section General Food Law on 1 July 2022' (sante.g.3(2023)2383955, 1 July 2022) <https://food.ec.europa.eu/system/files/2023-03/reg-com_gfl_20220701_sum.pdf>;
European Commission, 'Summary Report of the Standing Committee on Plants, Animals, Food and Feed Held in Brussels on 07 December 2018 (sante.ddg2.g.5(2019)768815, 7 December 2018) <https://food.ec.europa.eu/system/files/2019-02/reg-com_toxic_20181207_sum.pdf>;
European Commission, 'Standing Committee on Plants, Animals, Food and Feed Section General Food Law on 05 - 06 October 2017' (sante.ddg2.g.5(2018)475819, 5 – 6 October 2017) <https://food.ec.europa.eu/system/files/2018-02/sc_phyto_20171005_pppl_sum.pdf>;
European Commission, 'Standing Committee on Plants, Animals, Food and Feed Section General Food Law on 12 April 2016' (sante.ddg2.g.5(2016)2527400, 12 April 2016) <https://food.ec.europa.eu/system/files/2016-10/reg-com_gfl_20160412_sum.pdf>

nature. Hence, there are not any demonstrable success factors identifiable in previous COOL measures which could serve as source of inspiration for future national endeavours. Rather, it seems that measures, adopted prior to the entering into force of the PIR (29 May 2018) and before the Lactalis ruling (1 October 2020) emphasised the boundaries of Art. 39 FICR, can be extended quietly and secretly without anyone pointing to the obvious deficiencies. Yet, it can be assumed that said judgment put an end to the quite generous assessment of the Commission, as new labelling measures will have a more difficult time to get an approval after the ECJ clarified some of the contentious matters.

Furthermore, the existence of two different notification systems creates additional hurdles. Due to insufficient transparency requirements, the broader public cannot track the development of the proposal, let alone receive detailed information in terms of content. Additionally, as the example of Spain has shown, the interplay between the two procedures seems rather confusing for national authorities and even for the Commission, as DG Santé and DG Grow perform their respective analysis in an uncoordinated manner, leaving the impression that COOL measures are analysed randomly without a structured approach. The lack of public traceability reinforces this impression as non-governmental actors have very limited access to information.

To conclude this chapter, it seems that there is no pattern or identifiable success factors of previous national COOL measures, given that some of them seem to contain provisions which raise serious questions in regard to their compatibility with Union law, which surprisingly does not affect their respective validly. It only remains to observe that good timing (before the Lactalis ruling) seems to be an advantage. Moreover, the complexity of the two notification procedures might be beneficial for MSs, as it increases the chances of their proposals being waved through, at least by one DG.

5. Analysis of the Austrian draft ordinance on packaged foods

The draft ordinance on packaged foods was sent out for national review on 4 May 2022 with a review period ending on 17 June 2022. In parallel, it was submitted in accordance with Art. 45 FICR as well as under Directive 2015/1535 to the Commission. Hence, both the Information as well as the Notification Procedure were triggered, the stillstand period ended for both procedures on 11 August 2022.

Nonetheless, the draft ordinance was withdrawn by the Austrian government on 20 July 2022. Pursuant to a parliamentary request, which was answered on 31 October 2022 by minister Rauch, criticism raised during the national review process as well as the Commission's recommendation to reconsider the draft proposal, especially in light of the Commission's plan to introduce a uniform approach in the EU, led to this decision.[153] The proposal was subject to discussions in the PAFF Committee on its meeting on 1 July 2022. Three MSs voiced concerns in regard to the timing of the notification whereas three MSs were supportive of the envisaged measure, however, noted that harmonised rules across the EU would be preferable.[154]

By means of the TRIS platform, six stakeholders put forward their concerns vis-à-vis the envisaged measure: the Danish Veterinary and Food Administration on 3 June 2022[155], the Food Industries Association of Austria on 10 June 2022[156], the Austrian Branded Goods Association on 15 June 2022[157], the Austrian Association of Craft Food Producers on 28 June

153 Anfragebeantwortung durch den Bundesminister für Soziales, Gesundheit, Pflege und Konsumentenschutz Johannes Rauch zu der schriftlichen Anfrage (12068/J) betreffend Verordnungen zur verpflichtenden Herkunftskennzeichnung für Lebensmittel und Speisen – Stand des Notifizierungsverfahrens (Geschäftszahl 2022-0.696.860, 31 October 2022) <https://www.parlament.gv.at/gegenstand/XXVII/J/12068> accessed 14 March 2023.

154 European Commission, 'Standing Committee on Plants, Animals, Food and Feed Section General Food Law on 1 July 2022' (sante.g.3(2023)2383955, 1 July 2022) <https://food.ec.europa.eu/system/files/2023-03/reg-com_gfl_20220701_sum.pdf> accessed 29 April 2023.

155 Danish Veterinary and Food Administration, [03.06.2022] <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2022&num=338> accessed 11 July 2022.

156 Food Industries Association of Austria, 'EU legal assessment of the Austrian Ordinance on indications of origin of meat, milk and eggs as primary ingredient in packaged food (Notification No. 2022/338/A)' [10.06.2022] <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2022&num=338> accessed 11 July 2022.

157 Österreichischer Markenartikelverband, 'Stellungnahme des Markenartikelverbands Österreichs zum Verordnungsentwurf über die Verpflichtung zur Angabe der Herkunft von Fleisch, Milch und Eiern als primäre Zutat in verpackten Lebensmitteln.' [15.06.2022]

2022[158], the Austrian Chamber of Commerce on 29 June 2022[159] as well as the Liason Centre for the Meat Processing Industry in the EU, CLITRAVI, on 15 July 2022.[160] All of the above found fault in the Austrian draft proposal, mainly criticising its incompatibility with the free movement of goods, insufficient arguments that objectively establish a link between quality and origin as well as the failure to provide a convincing ground of justification that can substantiate the necessity for the envisaged proposal.

5.1. Compatibility with primary law

As laid out in chapter 3, national COOL measures must not only be measured against Art. 39 FICR, but also against EU primary law, especially the prohibition of quantitative restrictions and all measures having equivalent effect within the meaning of Art. 34 TFEU.

5.1.1. Relation to Art. 34 TFEU

It must be noted that national labelling requirements, such as stipulated by the Austrian draft ordinance, are to be classified as a product-related rule (and not as selling arrangement) and therefore considered as measure having equivalent effect within the meaning of Art. 34 TFEU – even if applied indiscriminately.[161] This view is also held by the Union's judicial body that recognised the potential risks of origin labelling: 'origin labelling can be applicable without distinction to domestic and imported products only in form because, by their very nature, they

---

<https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2022&num=338> accessed 11 July 2022.

158 Austrian Association of Craft Food Producers, 'Position Paper – Notification 2022/338/A - Austrian Ordinance on Origin Labelling of meat, milk and eggs as a primary ingredient in packaged foods.' [28.06.2022] <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2022&num=338> accessed 11 July 2022.

159 Wirtschaftskammer Österreichs, 'Verordnung über die Angabe der Herkunft von Fleisch, Milch und Eiern als primäre Zutat in verpackten Lebensmitteln; Stellungnahme' [29.06.2022] <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2022&num=338> accessed 11 July 2022.

160 Liaison Centre for the Meat Processing Industry in the European Union (CLITRAVI), 'Re: CLITRAVI comments on the Austrian draft ordinance of the Federal Minister for Social Affairs, Health, Care and Consumer Protection on the obligation to indicate the origin of meat, milk and eggs as a primary ingredient in packaged foods (TRIS 2022/338/A)' [15 July 2022] <https://technical-regulation-information-system.ec.europa.eu/en/notification/15495/stakeholder-contribution/file/601> accessed 11 August 2023.

161 Joined Cases C-267/91 and C-268/91 *Keck and Mithouard* [1993] ECR I-6097, para 15.

are intended to enable the consumer to distinguish between two categories of products, which may prompt the consumer to give preference to national products'.[162]

The mutual recognition clause in § 7 of the Austrian draft ordinance, which excludes foreign food products from the Austrian labelling obligations, does not alter the fact that non-domestic goods are put in a disadvantaged situation. It might be true that only Austrian food producers must bear the additional costs, however, through this asymmetric information disclosure, consumers are nonetheless influenced when making their purchase decisions as such rules enable consumers to distinguish between domestic and foreign goods – most likely to the expense of imported products. Several studies confirm that consumers tend to believe that domestic food products are more trustworthy than the same products from foreign countries.[163] Hence, consumers are prone to misunderstand origin labels as a cue to a long range of desirable product qualities even though origin information does not say anything about quality, safety, or production standards of a food. This is also true for the present case where domestic origin-labelled foods are to be compared with non-labelled foods – while it might not be traceable where exactly the latter come from, it is yet clear that they are not domestic.

Such subjective assessments, which have no relation to any proven quality characteristics but are solely based on prejudices, are vehemently rejected by the ECJ – the Lactalis decision being only the latest example in this regard. In the view of the responsible Advocate General (AG) in the Lactalis judgement, AG Hogan, national labelling rules make use of these consumer prejudices to the extent that they serve the 'purely nationalistic – even chauvinistic – instincts on the part of consumers' and are prone to be 'a disguised method of ensuring that preference is given to national products'.[164] This line of thought is also comprehensible when taking into account that the internal market is grounded on the assumption that food in the EU is safe – regardless from which MS it comes from as the same standards apply in the whole Union – and that the origin from a specific MS, as consumer preference, cannot be a

---

162 Case 207/83, *Commission v UK* [1985] ECR 1201, para 20.

163 See for instance: Knežević N, Grbavac S & Palfi M 'Country of Origin – The Importance for Consumers' [2019] 14(6) Eur Food & Feed L Rev 528, 530; Thøgersen J. & Nohlen, H.U, *Consumer understanding of origin labelling on food packaging and its impact on consumer product evaluation and choices: A systematic literature review* (Publications Office of the European Union, Luxembourg 2022); Rieke J W, 'Country of Origin Labelling – Trend zur Renationalisierung des Lebensmittelrechts?' [2019] 5 ZLR 625, 644, 647.

164 Case C-485/18 *Groupe Lactalis v France* [2020] ECR I-763, Opinion of AG Hogan, para 44.

admissible justification for any legislative intervention. Ultimately, national labelling requirements that serve protectionist interventions expose the common market to the risk of refragmentation. [165]

Despite the clear legal framework, it seems that the Austrian legislator, in fact strives, for this stigmatising effect that national origin labelling is likely to have vis-à-vis foreign non-labelled foods and does not even try to sell it as a 'disguised method'. There is no way to explain why Minister Köstinger would otherwise publicly declare that the Austrian ordinance strives for a situation in which 'domestic products can also be consciously given priority in the future'.[166] The intended protectionist objective of the ordinance becomes even more evident when reading the explanatory note accompanying the draft ordinance, which states that 'the origin of a product' […] represents a crucial characteristic of the quality of the product'[167] – thereby clearly contradicting the ECJ's reasoning.

Therefore, the Austrian draft decree on packaged foods must be considered as a potential discriminatory measure in the sense of quantitative restrictions within the meaning of Art. 34 TFEU.

5.1.2. Ground of justification

While the discriminatory nature of Austria's decree became evident, it must be assessed if Union primary law provides for a reasonable ground of justification for such measure.

5.1.2.1. Protection of consumers

According to the draft ordinance, its ultimate purpose is to inform customers about the origin of certain types of meat, milk and eggs in packaged food, thereby ensuring a high level of consumer protection. In fact, even though the protection of consumers is the justification ground most frequently invoked by MSs when introducing a national COOL measure[168], it is hardly admissible under EU law. Consumer protection is part of the non-exhaustive list of

165 Rieke 2019, 647 and Sosnitza 2016, 353.
166 Bundesministerium für Landwirschaft, Regionen und Tourismus, 'Köstinger zu Herkunftskennzeichnung: „Gesundheitsminister greift Vorschläge der Landwirtschaft auf' [01 April 2021] <https://www.ots.at/presseaussendung/OTS_20210401_OTS0155/koestinger-zu-herkunftskennzeichnung-gesundheitsminister-greift-vorschlaege-der-landwirtschaft-auf> (accessed 24. August 2023).
167 Explanatory note of the draft decree on packaged foods, 1.
168 Wennerberg & Nyman 2020, 14.

mandatory requirements, which was established by the Court in the Cassis de Dijon judgment to justify trade-restrictive measures. However, mandatory requirements can only be invoked to justify the indistinctly applicable rules, that is to say, domestic legislation of discriminatory nature can only be justified on the written ground of justification of Art. 36 TFEU, but not by having recourse to the non-exhaustive list of mandatory requirements.[169] While a trend towards the blurring of the rigid differentiation between applicable derogations depending on whether the measure is directly or indirectly discriminatory is observable, the ECJ continuously confirmed that consumer protection does not constitute a suitable ground of justification for trade-restrictive national labelling initiatives.[170]

5.1.2.2. Protection of public health

Art. 36 TFEU provides for the following grounds of justification: public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Since MSs cannot rely on consumer protection as possible ground of justification for national COOL measures, one could argue labelling schemes serve the maintenance of public health. However, efforts to that end might be a futile endeavour, since the Union's high standards for food products apply regardless of the MS and are maintained by strict and regular controls. Therefore, the ECJ held that trade-restrictive measures justified on grounds of public health must provide evidence of legitimate health concerns and demonstrate the existence of a coherent health policy concept. Otherwise, public health may be misused as pretext to covertly justify a trade impediment.[171] Hence, it follows that both, consumer protection and public health, do not constitute a suitable ground of justification to introduce a national COOL measure.

5.1.3. Proportionality test

Any state measure relying on one of the grounds of Art. 36 TFEU or the mandatory requirements must fulfil the principle of proportionality, that is to say, the envisaged measure shall not go beyond the necessary measures to achieve the legitimate aim pursued and must be

169 E.g. Joined Cases C-321/94 to C-324/94 *Pistre and others* [1997] ECR I-02343, para 52.
170 Barnard C, *The Substantive Law of the EU: The Four Freedoms* (5th edn, Oxford University Press 2013), 85-86.
171 Barnard 2016, 159.

proportionate to that objective. In case less restrictive means to achieve the same goal are available, MSs must give preference to them in order to pass the proportionality test. Although neither consumer protection nor reasons of public health provide a solid ground for justification, which renders the proportionality test obsolete, two scenarios in the following shall outline why the envisaged measure is furthermore disproportionate to the aim pursued.

The Austrian legislator emphasised that once adopted, the provisions on mandatory origin labelling will contribute to an increase food transparency, as consumers now would understand where their food comes from. However, this argument is flawed: Only food produced in Austria is subject to the draft ordinance, therefore, only a small proportion of available products – and only if certain types of meat, milk, or eggs constitute the primary ingredient(s) – are covered by the labelling rules. Foreign foods would continue to be sold without the origin labelling requirements. This partial transparency does not live up to the overarching increase in food transparency, as advertised by the legislator and stated in § 1 of the draft ordinance. In contrast, it once again highlights the likelihood of putting foreign food products at a disadvantage, which is clearly intended by the Austrian government but hardly suitable nor proportionate to do justice to the purpose of consumer protection.

Another argument contradicting the Austrian reasoning is the ECJ's perception of the amount of information the average European consumer cares about when making product decisions: 'reasonably well informed and reasonably observant and circumspect'[172] the average consumer who is 'heedful of the composition of a product'[173] is sufficiently informed by the list of ingredients of a food product. Hence, a correct list of ingredients is deemed enough information to satisfy the labelling demand of an average consumer based on which she or he is enabled to make reasonable purchase decisions. One could however argue that the European model of the average consumer is outdated. Established 30 years ago, factors which influence purchase decisions undoubtedly evolved overtime, with a notable rise in awareness regarding additional aspects, such as animal welfare or organic products. Even though it is debatable if the average European consumer is really only guided by the list of ingredients, this question does not alter the fact, that the Austrian envisaged proposal is still disproportionate in relation to its aim pursued, given the aforementioned argument.

172 Case C-210/96 *Gut Springenheide and Tusky v Oberkreisdirektor des Kreises Steinfurt* [1998] ECR I-4657, para 31.
173 Case C-51/94 *Commission v Germany* [1995] ECR I-3599, para 36.

It follows that the Austrian draft proposal pursues a protectionist objective aiming at promoting domestic products thereby able to hinder intra-Community trade within the meaning of Art. 34 TFEU and the mandatory requirements in the general interest. Informing customers and increasing food transparency are flawed arguments under the umbrella of consumer protection, which do not constitute an appropriate ground of justification as laid out above. Hence, the envisaged measure violates the Union's provision of the free movement of goods. Austria might consider other means, such as voluntary origin labelling (which is already applicable) or animal welfare labels, which could be more appropriate to achieve the purpose of informing consumers.

5.2. Compatibility with secondary legislation

5.2.1. Compatibility with the PIR

Literature agrees that the PIR conclusively regulates the application of Art. 26(3) FICR and does not foresee leeway for national measures which deviate therefrom. Otherwise, the intended uniform application throughout the EU could not be guaranteed anymore.[174] The Austrian government, however, understands the draft ordinance as 'continuation' of the PIR that now introduces 'a general obligation to indicate the origin of meat of bovine animals, swine, goat and poultry, milk and eggs as primary ingredients in packaged food'.[175]

Clearly, a general obligation for the indication of primary ingredients contradicts the modalities of the PIR as it exclusively regulates the application of cases where the country of origin or place of provenance of a food is given and incongruent with the country of origin or place of provenance of its primary ingredient. It seems that the Austrian decree tries to circumvent the conclusively regulated PIR by speaking of a 'continuation' of the PIR in the attempt to create the impression of a solid legal framework, when in fact MSs are not authorised to expand the rules of application of the PIR.

174 Obwexer 2020, 17.
175 Explanatory note of the draft decree on packaged foods, 1.

5.2.2. Indication of the country of origin of the relevant primary ingredients

5.2.2.1. Meat of bovine animals

§ 4 of the draft ordinance stipulates the modalities for the indication of the country of origin of the primary ingredients, starting in subparagraph (1) with beef. It states, that the origin of beef shall be indicated in accordance with Art.13 of Regulation 1760/2000. As summarised in chapter 3.3.3, Regulation 1760/2000 requires the indication of the country where the bovine animal was born, the country/countries where it was fattened and the country of slaughter. If all steps took place in the same (third) country, the voluntary indication 'Origin: (name of Member State or third country)' is permitted, pursuing to Art. 13(5)(b).

It is not clear what the Austrian legislator intends by referring to Regulation 1760/2000. One could interpret it as a mere declaratory reference to label the origin of beef as stipulated in Regulation 1760/2000, which however only foresees origin indications on a voluntary basis. Arguably, this would not do justice to Austria's intended objective of enhanced food transparency by increasing the amount of origin indications. Rahter, the draft ordinance seeks to turn the voluntary origin labelling scheme of Regulation 1760/2000 into a mandatory origin obligation without any legal authorisation to do so.

Furthermore, another weakness becomes apparent when bearing in mind the ordinance's objective: Within the meaning of Regulation 1760/200 beef only has an 'origin' if the animal from which the meat was derived was born, fattened and slaughtered in the same country. If those steps occurred in more than one country, the meat has no origin within the meaning of Art. 13(5)(b) of Regulation 1760/2000 and hence cannot carry an origin indication. However, only beef that is even qualified to have an origin indication is subject to the Austrian ordinance. The draft proposal does not consider a scenario in which beef was obtained in more than one country, let alone provide a labelling scheme for it. It follows that a small ration of beef meat – only such meat that qualifies to carry an origin labelling – is subject to the Austrian draft ordinance. It is doubtful whether this will actually contribute to inform and increase food transparency for customers in a satisfactorily manner given the restricted cases of application. Rather, the protectionist nature of the draft ordinance becomes reiterated: Customers in Austria will likely prefer beef from a domestic origin over beef with a foreign origin or compared to beef having no recognisable origin at all.

5.2.2.2. Meat of swine, sheep, goat and poultry

Pursuant to § 4(2) of the draft ordinance, the origin of meat of swine, sheep, goat and poultry shall be indicated in accordance with Art. 5 of Implementing Regulation 1337/2013. Similarly to the labelling modalities of beef, the country of rearing and slaughter of swine, sheep, goat and poultry shall be indicated; if born, reared and slaughtered in one MS or third country a voluntary origin indication is admissible.

Facing the same riddle as for the origin indication of beef, it is not clear if a mere declaratory reference to the voluntary origin indication of Regulation 1337/2013 or a general obligation to indicate the origin of swine, sheep, goat and poultry meat is intended by Austria. Nevertheless, the latter seems more probable, even though national mandatory origin indications are not foreseen under Regulation 1337/2013. However, the Regulation merely covers pre-packaged meat; Austria therefore may introduce additional origin labelling requirements in accordance with the provisions of chapter VI of the FICR.[176]

As for beef, only meat obtained from swine, sheep, goat and poultry and derived from animals born, reared and slaughtered in one single country can carry an origin indication and are thus covered by the Austrian draft ordinance; meat derived from animals born, reared and slaughtered in several countries is not subject to the ordinance.

5.2.2.3. Milk

In line with § 4(3) of the draft ordinance, the origin of milk used as a primary ingredient in packaged food shall be given by indicating the country where the cow was milked. No mandatory origin labelling rules for milk apply in the EU to this point. Although the Commission was tasked with the preparation of a report in regards to mandatory indication of the country of origin or place of provenance for milk (Art. 26(5)(b) FICR) and milked used as an ingredient in dairy products (Art. 26(5)(c)FICR), the assessment did not reveal any need for legislative interventions.[177]

176 European Commission, '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, 3.

177 ibid, 13.

Austria may therefore, theoretically, introduce a national labelling measure for milk, provided that it does not come into conflict with Union law. However, in light of the recent Lactalis case, prospects of success are dwindling. The Austrian draft decree on packaged foods does not cover milk per se but milk used as a primary ingredient. However, as shown above, Austria is not authorised to introduce national labelling measures for milk used as a primary ingredient by referring to the PIR, as the PIR contains a conclusively harmonises the implementation of Art. 26(3) FICR.

5.2.2.4. Eggs

Finally, § 4(3) of the Austrian draft decree requires the origin of eggs to be indicated by stating the country of origin, which is the country where the egg was laid. Implementing Regulation 589/2008 stipulates the specific Union marketing standards for eggs, Art. 9 thereof requires eggs to contain, *inter alia*, to carry a producer code stating the farming method as well as a country code from the corresponding country where the establishment, from which the eggs come, is located. Neither mandatory nor voluntary indications of origin are foreseen under said Regulation. Yet, this Regulation only applies to unprocessed eggs – processed eggs of any kind are not covered. MSs may therefore introduce national mandatory origin indications to be measured against the relevant Union provisions.

5.2.3. Ambiguous wording regarding the permissible forms of origin indication

§ 5 of the draft ordinance clarifies that the indication of the country of origin must follow in accordance with Art. 2 PIR read in conjunction with Art. 26(3) FICR. As laid out in chapter 3.3.5, the PIR allows for several options to designate the origin or provenance of the primary ingredient, of which food business operators can freely chose from. Austria cannot restrict the scope of application by prescribing the indication on the country-level and precluding norm addressees from opting for other forms of indication, as the PIR finally harmonises the application of Art. 26(3) FICR. Although Austria affirmed in the explanatory note that all geographical areas are permissible[178], this stands in direct contrast with § 4(1-4) of the draft decree that defines the country of origin as the only form of indication. Ultimately, it is not clear which forms of origin indication are permissible, pursuant to the provisions of the draft decree, as its wording is inconsistent and confuses readers.

178 Explanatory note of the draft decree on packaged foods, 2.

5.2.4. Preliminary conclusion: National scope to adopt COOL measures relating to the origin labelling of primary ingredients

Technically, Austria could implement a national labelling scheme for products that are not yet covered by Union specific regulations, that is to say, for milk and meat other than beef, swine, sheep, goat and poultry meat.[179] In the present case, Austria, however, does not seek to introduce additional particulars for food categories but rather seeks to alter the rules for the indication of the origin of primary ingredients – a scheme that is conclusively harmonised under EU law without any demonstrable discretion for national measures. Austria could therefore – if at all – introduce rules for the primary ingredients of certain foods, for which specific Union legislations apply (*inter alia* beef products and eggs), as they remain untouched by the FICR and hence by the PIR. Yet, it is debateable to which extent this non-affection clause applies. In any case, such a measures would have to be consistent with the free movement of goods.[180] As elaborated throughout this chapter, the Austrian proposal in its present form hardly complies with the provisions of applicable primary Union law.

5.2.5. Compatibility with Art. 39 FICR

MSs seeking to adopt national measures which requires additional mandatory particulars must comply with the strict requirements of Art. 39 FICR. Interpreted by the Court in *Groupe Lactalis v France*, it unequivocally stated that the requirements of Art. 39 FICR must be met cumulatively, by first assessing if Art. 39(1) FICR is met and only if affirmative, by considering Art. 39(2) FICR.[181]

5.2.5.1. Art. 39(1): Ground of justification

The grounds of justification of Art. 39(1) FICR are slightly different to those stipulated by Art. 36 TFEU, albeit quite similar. Although Art. 39(1)(b) FICR lists the protection of consumers as legitimate ground of justification, the Austrian government fails to come up with a reasonable explanation how the ordinance will contribute to the achievement of said objective for the very same reasons as it cannot satisfactorily justify that it is in conformity with the free movement of goods. As stated in chapter 5.1.1, due to its discriminatory

179 Cf. Obwexer 2020, 16.
180 Cf. Obwexer 2020, 17.
181 Case C-485/18 *Groupe Lactalis v France* [2020] ECR I-763, paras 36-40.

character coupled with an inconsistent and disproportionate explanation of how it can contribute to food information and transparency, the ordinance breaches the prohibition of quantitative restrictions and measures having equivalent effect of Art. 34 TFEU as well as it fails to meet one of the grounds of justification of Art. 39(1) FICR.

5.2.5.2. 39(2) FICR: Proof of link between quality and origin

According to the ECJ, national mandatory indications related to the origin are only permissible if there is there is an objective ascertainable link between the origin of the food and the distinctive qualities of the food which distinguishes the food from other foods that – due to their different origin – do not possess them. In its final judgement, the Court held that production and processing methods do not qualify as distinctive local factors that influence the quality of a food. By contrast, in the view of AG Hogan, specific production techniques or transportation might be suitable for justifying the required link between origin and quality.[182] The Court is by no means obliged to follow the assessments of its assigned AG, therefore, only the final decision – in that case different from the opinion of AG Hogan – is to be considered.[183]

Along with the draft decree, the accompanying explanatory note, and the impact assessment, Austria submitted a statement, seeking to provide evidence between the quality(s) of food (meat, milk and eggs) and its origin or provenance (Austria) including proof that the majority of Austrians put emphasis on the provision of that information, to the Commission.[184]

On a total of 76 pages, the statement provides an overview of Austria's agricultural structure and production methods[185], characterised by, *inter alia*, circular economy-oriented small-scale farming structures[186], high standards of food safety[187] and animal welfare[188] or the

182 Case C-485/18 Groupe Lactalis v France [2020] ECR I-763, Opinion of AG Hogan, para 61ff.
183 Case C-229/09 *Hogan Lovells International* [2010] ECR I-0000, para 26.
184 Bundesministerium für Soziales, Gesundheit, Pflege und Konsumentenschutz, 'Österreichische Stellungnahme im Rahmen des Notifikationsverfahrens zur Herkunftskennzeichnung der primären Zutaten Fleisch, Milch und Ei. Nachweis der Verbindung zwischen Qualität(en) von Lebensmitteln und ihrem Ursprung oder ihrer Herkunft [2022] <https://www.verbrauchergesundheit.gv.at/Lebensmittel/Kennzeichnung/herkunft/Nachweis_Qualitaet_und_Herkunft.pdf?8j7uv4> (Austrian notification statement) accessed 29 May 2022.
185 ibid, 7ff.
186 ibid, 9f, 49.
187 ibid, 26ff.
188 ibid, 44ff.

renouncement of genetically modified organisms (GMO) in animal feed.[189] The last part of the statement is dedicated to more detailed scrutiny of milk, meat and eggs, including animal feeding and livestock farming of those animals yielding the products in question.[190] Overall, the statement aims to highlight various factors which ensure the superiority of Austrian milk, meat and eggs, thereby buttressing the need for an mandatory origin labelling scheme which enables consumers to identify products containing such ingredients.[191]

Already the introduction shows the legally flawed approach that the Austrian competent authorities took: By explicitly referring to the opinion of AG Hogan, Austria concludes that quality criteria, beyond physical, nutritional, organoleptic or taste characteristics, can as well be suitable for bringing the required proof between quality and origin. Based on this assumption, Austria presents a 'modern' quality concept of food, which considers different factors, such as animal welfare or sustainability, as those values display consumer preferences, guide purchase decisions, and contribute to a more climate-friendly and sustainable alignment of Austria's food industry.[192] Furthermore, since there is no criteria determining 'food quality', the term shall be interpreted in accordance with current developments, namely 'socio-political goals and the wishes of consumers'.[193]

In the absence of a distinctive food quality – as legally required by the ECJ – Austria refers to the – legally non-binding – opinion of AG Hogan and formulates a new quality concept of food. At this point, by disregarding applicable case law, it is already evident that Austria failed to establish the required link between quality and origin.

Even if Austria's newly formulated 'modern' concept of quality was admissible under EU law, the drafters of the assessment failed to come up with convincing arguments that could justify the existence of outstanding quality factors which related to the Austrian origin, apply throughout Austria and are unique to Austria. For instance, although the Austrian territory is small in size, it has very diverging topographical features: the West is characterised by the mountainous region of the Alps whereas the East, in contrast, is characterised by the flat landscape of the Pannonian Basin. Due to this heterogeneous topography, Austria cannot

189 ibid, 38f.
190 ibid, 50-65.
191 ibid, 4, 6, 49.
192 ibid, 5f.
193 ibid, 15.

convincingly argue that the whole country has the same distinctive locational factors that furthermore contribute to outstanding food qualities that other foods from other countries do not possess.

Additionally, although the government refers to a high degree of animal welfare, the Austrian breeding conditions, especially for swine breeding have often been criticised in the past due to widespread occurrence of slatted floors.[194] Aware that such practice is hardly considered animal-friendly, the drafters of the assessment suggest to use mandatory origin labelling as a tool to promote the sale of Austrian swine meat: in their view, introducing a COOL measure will give impetus to switch to more animal-friendly systems which will then in turn lead to a higher turnover of Austrian meat.[195] It would be downright negligent of the Commission to approve a national COOL measure intended to promote the sale of domestic foods to further stimulate the transition to more animal-friendly production standards, especially in light of the questionable breeding standards currently applicable in Austria.

Moreover, the assessment does not provide sufficient science-based evidence to back up the allegedly tremendous distinctive local factors that exist throughout Austria. Except for a couple of studies, which provide evidence for some Austrian production and breeding factors, the assessment lacks comparison with other MS's standards to a large extent. However, it can be assumed that most parts of Austria's 'modern quality concept', such as small-scale farming, food safety and respect for animals, in fact, can be found across several other MSs.

5.2.5.3. 39(2) FICR: Consumer expectations

To meet the second condition of Art. 39(2), namely the proof that a majority of consumers attach value to the link between certain qualities of the food and its origin of provenance, Austria lists several surveys, conducted by AMA-Marketing, TFactory and KeyQUEST.[196] They identified similar results: A significant number of participants support the extension of mandatory origin labelling requirements[197] as the most prevalent factors influencing

194 Der Standard 'Schweinehaltung in Österreich trotz Gütezeichens oft katastrophal' (Der Standard, 11 April 2022) <https://www.derstandard.de/story/2000134841974/schweinehaltung-in-oesterreich-oft-trotz-guetezeichen-katastrophal> accessed 6 October 2023.
195 Austrian notification statement, 57.
196 ibid, 15ff.
197 ibid, 25.

consumer's purchase choices are 'freshness, high quality, domestic origin and regional products'.[198]

While there is no doubt that factors such as locality, sustainable production methods animal welfare standards[199] do become increasingly important for consumers, mere consumer expectations cannot replace the required link between origin and distinctive food quality.[200] The link is only tenable if based on objective criteria and not on subjective associations.[201] The existence of a proven link between certain qualities of the food and its origin or provenance is the only way to ensure that the envisaged measure is not a disguised trade prohibition with the only aim to promote domestic sale. It is needless to emphasise that measures based on subjective associations that are likely to jeopardise the premises of the internal market will not withstand the ECJ.

In conclusion, Austria fails to meet one of the grounds of justification of Art. 39(1) and cannot sufficiently provide evidence that there is a verifiable link between the distinctive qualities of the concerned foods and their Austrian origin. At this stage, it does not help that the proof of evidence that a vast part of consumers are interest in knowing the origin of food products could be demonstrated. Hence, it follows that the draft ordinance is not in compliance with the requirements set out in Art. 39 FICR.

The proposal was withdrawn by Austria before the Commission could decide on it. Given the discrepancies with Union law, as outlined above, the chances of approval however seem to be at the very best modest.

5.3. Discrimination of nationals?

As shown in the previous chapters, the Austrian draft ordinance on the introduction of mandatory origin labelling for the primary ingredients milk, meat and eggs in packaged foods is not in accordance with applicable Union law, especially with the free movement of goods, Art. 34 TFEU, and the provisions of the FICR, in particular Art. 39 FICR.

198 ibid, 21.
199 See for instance: European Food Safety Authority, Special Eurobarometer Wave EB97.2 [2022], 13ff.
200 Case C-485/18 *Groupe Lactalis v France* [2020] ECR I-763, para 39.
201 Case C-485/18 *Groupe Lactalis v France* [2020] ECR I-763, paras 42 and 45.

The Austrian draft decree only applies to food business operators based in Austria, thereby putting them at detriment vis-à-vis non-domestic food producers. Considering the simplified outcome-oriented impact assessment, in which Austria claims that there are no essential financial implications for Austrian food business operators, it can be assumed that in the government's view the ordinance does not demonstrably discriminate nationals.[202] In the framework of their impact assessment, however, no study substantiating this claim, was carried out. In direct contradiction, the Commission found that there is a misconception in regards to origin labelling as 'consumers are generally unaware that there are additional costs associated with origin labelling and believe that it is just 'the cost of a little printer ink''.[203]

It can be assumed that domestic food business operators might face a significant rise in costs and logistical challenges in case the decree would be adopted. Nonetheless, whether there is a discrimination against nationals must be measured against the relevant Austrian legislation interpreted by national courts, since it is not the ECJ's responsibility to interpret domestic law.

5.4. Comparison with previous COOL measures and prospect of success for future national initiatives

The strict requirements of Art. 39 FICR to introduce national COOL measures were interpreted by the ECJ in an even more rigorous way. Given the example of the Austrian COOL initiative, it becomes evident that the existence of an objective link between quality and origin as well as a suitable ground of justification seem to be especially challenging to prove – to the extent where the questions as to whether MSs truly have room for national initiatives at all arises.

As shown in chapter 4, a handful of other MSs adopted national labelling schemes for the same food categories as Austria (meat and milk). Arguably, some of those initiatives demonstrate severe inconsistencies with Union law, especially after the PIR came into force, but remain valid without being legally challenged. Comparing the previous measures with the Austrian proposal, it seems that their luck lies in their adoption before the Lactalis decision

202 Simplified outcome-oriented impact assessment, 1.
203 European Commission, 'Report to the European Parliament and the Council on the compulsory indication of the country of origin or place of provenance of meat as an ingredient' COM (2013) 755 final, 9.

was announced and the strings for national endeavours tightened. It also follows, that new measures – such as the Austrian proposal – might have a significantly harder time to get the Commission's approval.

Nonetheless, is better timing really the only success factor that puts former COOL measures at an advantage in comparison to the Austrian proposal? While most of the discussed measures notified by MSs, including Austria, do have their flaws, only the Austrian draft decree touched upon the voluntary character of origin indications in the narrow sense. The idea, to preclude food business operators to make use of the voluntary origin indication by introducing a general obligation to indicate the origin of certain primary ingredients, has, as far as evident, not been notified before by another MS. In fact, MSs who did introduce national COOL measures with an obligation to indicate more than one country of origin or place of provenance of a food (mostly in the case of meat where the country of birth, rearing and slaughter of the respective animal must be included) left it up to the food business operators if they wish to make use of that facultative origin indication but no MS introduced a general obligation to indicate the origin of a food or primary ingredient. As discussed in the previous section, such a 'general obligation' is not in accordance with Union law.

Moreover, as summarised in chapter 5.2.5, the PIR is to be regarded as fully harmonised – MSs cannot deviate from its provisions as Austria intended. While other MSs did adopt COOL measures containing diverging rules, they did so before the PIR entered into force and now seem to have an easier time to extend their already existing measures (see chapter 4.9).

Further obstacles that the draft succumbed to: From a political and legal point of view, it is inexplicable how the legislative drafters decided to base their notification strategy on a 'modern quality concept' which refers to the view of AG Hogan when the Court, in its final judgement, clearly contradicts his opinion. Moreover, despite applicable case law ruling out the possibility to use consumer protection as suitable ground of justification for measures of discriminatory character, Austria based its measure on consumer interests.

Yet, why did Austria take this risky path when it can be assumed that the drafters are well aware of the narrow legal situation and why did they not opt for alternative solutions? In summary, it seems that there are simply no alternatives. Considering the legal framework for national COOL measures and the ECJ's strict interpretation thereof, it is (seemingly) impossible to come up with a proposal that fulfils all the criteria. The opening clause of Art.

38(2) FICR which allows for national initiatives in areas not specifically harmonised by the FICR in conjunction with the associated requirements of Art. 39 FICR exists in theory. In practice, however, it seems that there is no thinkable area of application that could meet all required conditions of both the FICR and primary Union law. A suitable ground of justification and the objectively established link between quality and origin constitute the biggest challenges when seeking to adopt a COOL measure. Austria's attempt to do so can probably be best described as political actionism to satisfy voters. Assumingly, it is unlikely that any other MSs will be able to draft a proposal that fulfils all criteria, given the limited scope of application. However, the next section is intended to demonstrate that there is some room for manoeuvre – even if only to the extent of non-prepacked food.

6. Analysis of the Austrian ordinance on mass catering establishments

The initial Austrian draft decree on mass catering establishments focused on the origin indication of milk, meat and eggs used as primary ingredients in dishes served at mass catering establishments; restaurant operators were excluded from the scope of application of the decree. The specifications on the labelling requirements were akin with those of the decree analysed in chapter 5 and hence showed similar deficiencies. After notification to the Commission, the latter clarified that national labelling regulations for unpackaged food products are to be notified in accordance with Article 44(3) of the FICR and not under Art. 45 FICR. Hence, Austria withdrew its proposal on 23 May 2023, reviewed it and published the revised version on 16 March 2023 in the Federal Law Gazette, which then came into effect on 1 September 2023.[204]

Art. 44 FICR provides an extensive scope for national measures regarding non-prepacked food. Apart from the allergen labelling, stipulated in Art. 9(1)(c) FICR all other particulars in Arts. 9 and 10 FICR are not mandatory (Art. 44(1)(a) and (b) FICR). However, MSs can declare parts of or all other information of Arts. 9 and 10 FICR to be mandatory by adopting national measures in that regard (Art. 44(2) FICR), which must be communicated without delay to the Commission (Art. 44(3) FICR). It follows that MSs are not entitled to specify nationally any mandatory information which is not already covered in Arts. 9 and 10 FICR.

The reviewed ordinance now requires operators of large kitchens, such as cafeterias in hospitals, schools or universities, to indicate the country of origin of milk, meat and eggs of meals served in both private and public large kitchens. The country of origin is to be communicated in written form to consumers. Furthermore, all providers of communal catering (including cafés, restaurants, etc.) may decide to voluntarily indicate the origin which also makes them subject to the scope of application of the decree. Any provided origin information must be accurate and should under no circumstance be misleading.[205]

---

204 Verordnung des Bundesministers für Soziales, Gesundheit, Pflege und Konsumentenschutz über Angaben der Herkunft von Zutaten in Speisen, die in Einrichtungen der Gemeinschaftsverpflegung abgegeben werden in der Fassung der Bekanntmachung vom 16 März 2023, (BGBl II 65/2023).

205 ibid, § 2(1)1-2.

The ordinance requires the origin labelling to be carried out, to the extent possible, in accordance with European Union regulations. For example, the country of origin of beef should be labelled in accordance with Article 13 of Regulation 1760/2000, and that of pork according to Article 5 of Implementing Regulation 1337/2013. However, in both cases, it remains unclear what is meant by 'country of origin' since there are at least three possible countries of origin for beef (country of birth, country/countries of rearing and country of slaughter) and at least two possible countries of origin for pork (birth and rearing).[206]

An online accessible questionnaire provides clarification: 'In principle, the geographical area where all three stages have taken place should be indicated, if applicable.'[207] It further states, if an animal, for example, was born in Germany and raised and slaughtered in Austria, the origin should be indicated as 'EU', however, it is also possible to specify 'born in Germany' and 'raised and slaughtered in Austria'. Moreover, the questionnaire explains, that, in general, the indication of the country of origin shall be made in accordance with the list of geographical areas in Art. 2 PIR. This includes the possibility to declare the origin as 'EU' or 'non-EU'; the Austrian decree also provides, in cases where the origin cannot be clearly traced, a statement that the origin is 'unknown'.

The decree contains a list of dishes (listed in the accompanying annex thereof), for which the indication of the origin of meat – beef, swine, sheep, goat, poultry and game – offered as a whole or in parts is mandatory. Moreover, the origin of milk shall be indicated by stating the country where the cow was milked. This obligation applies to milk and dairy products that constitute a (side) dish (e.g. plain yoghurt), or to dishes containing milk if the used milk is considered a 'qualitative component' (e.g. rice pudding). Similarly, the origin of eggs, which are prepared as part of a meal (e.g. cooked or boiled egg), as well as dishes containing eggs, if the eggs are considered a 'qualitative component' (e.g. omelette) must be indicated by stating the country where the egg was laid.

The questionnaire explains that the qualitative component of a dish is either the ingredient mentioned in the name, or the ingredient consumers usually associate with that name. This

206 ibid, § 4.

207 Kommunikationsplattform VerbraucherInnengesundheit, 'FAQ zur Herkunft von Speisen in Gemeinschaftsverpflegung, Großküchen' (Kommunikationsplattform VerbraucherInnengesundheit, 2023) <https://www.verbrauchergesundheit.gv.at/Lebensmittel/Kennzeichnung/herkunft/faq_nat_Herkunft.html> accessed 10 October 2023.

definition is aligned with the Union's understanding of the qualitative component of a primary ingredient (see chapter 3.3.5). Moreover, the indication in percentage over the course of a year is also permissible, provided it amounts to 100%. One example could read as follows: 'Pork: 75% Austria, 20% EU, 5% Non-EU.' Minimum/maximum statements ('meat at least 40% from Austria') are inadmissible.[208]

6.1. First political reactions and practicality of the revised ordinance

First reactions suggest that the new obligation was well received by those who are subject to the decree, claiming that it hardly causes any additional efforts.[209] Likewise, the Austrian Farmer's Union welcomes the legislative initiative expecting it contributes to the sale of their products.[210] Criticism is increasingly expressed regarding the scope of application: animal welfare organisations, for instance "Four Paws", complain that the decree is not far-reaching enough and therefore cannot provide the proclaimed transparency for consumers since restaurants are not covered. Similarly, the possibility to indicate the origin of a food in percentage over the course of a year is perceived as too imprecise.[211] Equally sceptical, however, for different reasons is the gastronomy sector. There is concern that the rules may soon be expanded to gastronomy businesses, leading to what they perceive as excessive bureaucratic demands that impose an additional strain on the gastronomy industry.[212]

The practicality of the Austrian ordinance on the indication of the origin of the ingredients milk, meat and eggs in dishes served in facilities for mass catering will only become apparent over the course of the next months. However, it seems that it has largely benefitted from the review process. Instead of focusing on 'primary ingredients', the ordinance, in its current

208 Kommunikationsplattform VerbraucherInnengesundheit, 'FAQ zur Herkunft von Speisen in Gemeinschaftsverpflegung, Großküchen'.

209 Kurier, 'Herkunftsbezeichnung Für Lebensmittel: Das Sagen Die Kantinen-Betreiber' (*kurier.at*, 6 September 2023) <https://kurier.at/chronik/oesterreich/herkunftsbezeichnung-fuer-lebensmittel-das-sagen-die-kantinen-betreiber/402584207> accessed 6 October 2023.

210 Der Standard, 'Verpflichtende Herkunftskennzeichnung in Großküchen startet mit 1. September' (*Der Standard*, 16 March 2023) <https://www.derstandard.at/story/2000144557822/verpflichtende-herkunftskennzeichnung-in-grosskuechen-startet-mit-1-september> accessed 6 October 2023.

211 Penz E, 'Mit 1.09 Startet verpflichtende Herkunftskennzeichnung in Kantinen' (*VIER PFOTEN in Österreich - Tierschutz. Weltweit*, 22 August 2023) <https://www.vier-pfoten.at/unsere-geschichten/pressemitteilungen/2023/august/mit-1-09-startet-verpflichtende-herkunftskennzeichnung-in-kantinen> accessed 6 October 2023.

212 Angerer M, 'Lebensmittelkennzeichnung: Transparenz oder Tortur?' (gast.at, 21 September 2023) <https://www.gast.at/gastronomie/lebensmittelkennzeichnung-transparenz-oder-tortur-51958?auth=1> accessed 24 September 2023.

form, emphasises merely the qualitative definition of a primary ingredient with the benefit of bypassing any potentially occurring inconsistencies with the Unions definition of ‘primary ingredient’. Furthermore, the ‘origin’ of an ingredient is now clearly defined, as is the applicability of Union law, especially the possiblities of indicating the country of origin. Despite being criticised by animal welfare organisations, the indication of the origin over the course of a year and expressed in percentage gives large kitchen operators room for flexible adjustments of their food products without being too restrictive.

6.2. Advantage of adopting COOL measures under Art. 44 FICR

As shown in the previous section, the adoption of national COOL measures is indeed possible – even after the Lactalis jurisprudence. While the Austrian draft ordinance on packaged foods was withdrawn, due to criticism voiced as to its legal compatibility, the ordinance on mass catering establishments was adopted. Three reasons might explain why: First of all, there are no harmonised EU regulations on non-packed food. MSs are therefore free to adopt such measures under the much broader regulation scheme of Art. 44 FICR. Secondly, the domestic nature of the ordinance has little to no impact on the internal market and hence causes less EU-wide political debates that could have jeopardised its adoption. Thirdly, the decree highly benefitted from the improvements listed in chapter 6.1, rendering its scope of application less ambiguous and much clearer in comparison to its original version.

In comparison, the draft ordinance on packaged foods caused much more controversy, due to its potential effects on the internal market and its obligation to comply with the (almost) unrealistic requirements of Art. 39 FICR and Union primary law. As shown in chapter 5, the accurate compliance with the requirements to adopt COOL measures in the area of prepacked foods under the current conditions is practically not feasible. By interpreting the requirements narrowly without giving any example of how those conditions (especially the link between origin and quality) can be met, the ECJ restricted the scope of application to an extent where it seems impossible at all. In contrast, the conditions for the adoption of rules for non-packed foods allow for more flexibility under Art. 44 FICR. While the procedure to adopt national measures for non-prepacked food is less complex, the scope of application is limited to what is already provided for in Art. 9 and 10 FICR. The following section shall nevertheless point out two discrepancies of the Austrian decree on mass catering establishments, which also highlight the need for further specification of the scope of application of Art. 44 FICR.

6.3. Deficiencies of the Austrian decree on mass catering establishments

The first concern of the Austrian decree on mass catering establishments refers to the obligation to communicate a national measure in the area of non-prepacked foods. From Art. 44(3) FICR, it is evident that the general applicable notification procedure of Directive 2015/1535 (and not that of Art. 45 FICR) must apply.[213] Nonetheless, neither the initial nor the revised version of Austria's decree on mass catering establishments was notified via Directive 2015/1535 and is thus not available on the TRIS website. Case law and literature agree that failure to notify a decree under said Directive can lead to its inapplicability declared by national Courts.[214] Merely the initial version of the draft ordinance was communicated to the Commission by means of the FICR procedure.

Secondly, pursuant to Art. 44(1)(b) FICR, MSs may adopt national measures which render the indications of Art. 9 and 10 FICR (in addition to the already compulsory allergen labelling) mandatory for non-prepacked food. Such a national regulation may cover some or all of the provisions of Art. 9 and 10 FICR but shall not go beyond what is already provided for therein.[215] As a reminder: Art. 9(1)(i) FICR prescribes the indication of the country of origin or place of provenance where provided for in Art. 26 FICR. The latter describes three circumstances where such an obligation applies, namely to provide consumers from being misled (Art. 26(2)(a) FICR), for specific types of meat (Art. 26(2)(b) FICR) and if the origin or place of provenance of the primary ingredient differs from that of the food itself (Art. 26(3) FICR).

Now, the Austrian decree prescribes the indication of meat (going beyond those types of meat covered by Art. 26(2)(b) FICR), milk and eggs. One could argue that such an obligation is inadmissible, as it goes beyond the cases provided for in Art. 26 FICR and creates additional mandatory indications, which are inadmissible pursuant to Art. 44(1)(b) FICR. However, one could also argue that the prevention of misleading consumers (Art. 26(2)(a) FICR) can justify

213 As discussed in chapter 3.3.6.

214 Cf. Case C-307/13 *Ivansson and Others* [2014] ECR I-2058; Case C-95/14 *UNIC and Uni.co.pel* [2015] ECR I-492; followed by Sosnitza & Meisterernst 2023, art 44 marginal 15 and Wennerberg & Nyman 2020, 19.

215 Sosnitza & Meisterernst 2023, art 44 marginal 12

the necessity of the Austrian measure.[216] Holding this view would however also require a convincing justification why the danger of misleading consumers only exists in the case of meat, milk and eggs and not for other ingredients of meals served in mass catering establishments.

The scope of Art. 44 FICR and the national leeway to adopt domestic measures based thereof is an interesting area of the FICR, which has, as far as evident, not been thoroughly discussed in literature. Nonetheless, the scope of application should be subject to further discussions to clarify legal ambiguities, such as explained above. While Austria did not notify the proposal to the Commission via Directive 2015/1535, it did at least communicate the initial version under the procedure of Art. 45 FICR, albeit it is questionable if Austria thereby met its notification obligation adequately. Again, the existence of the two notification procedures highlights additional doubts and reiterates the need for further specification by the competent EU authorities.

7. Current developments in Brussels

7.1. Farm to Fork Strategy – a dead project?

As part of the European Green Deal, the Farm to Fork Strategy outlines measures to perform a just transition toward a sustainable food system in the EU. Part of the approach is the consideration to extend the existing food products which are subject to mandatory origin indications. The long-awaited accompanying legislative framework for the implementation of the Farm to Fork approach was announced to be finalised by the end of 2023. Its ambitious goal is to establish, for the first time, a cohesive, cross-sectorial and all-comprising approach to food security, going beyond the common agricultural policy. Nonetheless, the whole strategy is widely contested between different interest groups. In particular, the ongoing war in Ukraine exacerbates the discussion as the connected disruption of grain exports exposed the fragility of the global food supply and raises doubts as to whether the Farm to Fork

216 The prevention of misleading actions is a fundamental principle of the whole Regulation, cited in several recitals of the FICR, such as Recital 29, directly relating to origin indications.

Strategy can adequately respond to such, and other, potential threats to the European food security.[217]

Despite ongoing discussions, the acting Commission President, Ursula von der Leyen, did not address the Union's Farm to Fork approach in her State of the Union Speech in 2023. She recognised that 'many are already working towards a more sustainable form of agriculture', emphasised that 'we need more dialogue and less polarisation' and announced the launch of 'a strategic dialogue on the future of agriculture in the EU'.[218] While no further information in regard to the announced 'strategic dialogue' were given, rumour has it that such initiation might put the Farm to Fork Strategy on ice. Even more striking is the fact that in her letter of intent which supplements her speech, von der Leyen did not list neither the Sustainable Food Systems Law – the legal backbone of the Farm to Fork strategy – nor the EU's revision of the Animal Welfare Legislation among her key priorities for 2024 in the context of the EU Green Deal.[219]

Announced with much fanfare, the future of the Farm to Fork Strategy and its envisaged actions now remains uncertain. In particular, it is still undecided if the legislative framework will address an extension of mandatory origin labelling rules since the Commission, in its communication paper, merely declared to 'consider to propose' further EU-wide obligations in that context.

7.2. Revision process of the FICR – efforts undertaken

Yet at the same time, the Commission already took concrete actions to follow-up on the initiatives proposed in the Farm to Fork blueprint. To revise the provisions on the information provided to consumers, a process including the drafting of impact assessments, the

---

217 Fortuna G, Dahm J and Foote N, 'Commission Chief Envisages Change of Tack on EU Farming Policy' (*euractiv.com*, 14 September 2023) <https://www.euractiv.com/section/agriculture-food/news/commission-chief-envisages-change-of-tack-on-eu-farming-policy/?_ga=2.2759538.31937742.1695233261-1197901669.1695233260> accessed 6 October 2023.

218 European Commission, '2023 State of the Union Address by President von Der Leyen' (Speech 23/4426, 13 September 2023). <https://ec.europa.eu/commission/presscorner/api/files/document/print/en/speech_23_4426/SPEECH_23_4426_EN.pdf> accessed 13 September 2023.

219 Fortuna G, Dahm J and Foote N 2023.

commission of studies and a large-scale public consultation survey were conducted. Those research and consultation activities focused on the four following areas:

1. Harmonised mandatory front-of-pack nutrition labelling/nutrient profiles;
2. Extension of mandatory origin or provenance indications (in particular, milk and milk used as an ingredient, meat used as an ingredient, rice, durum wheat, potatoes and tomato used in certain tomato products);
3. Date marking;
4. Labelling of alcoholic beverages (list of ingredients and nutrition declaration).[220]

Inception Impact Assessments

The Commission prepared inception impact assessments for the four aforementioned matters of interest with the intention to outline challenges, policy objectives and potential solutions including thinkable impacts. In the case of origin labelling, the corresponding inception impact assessment was published on 23 December 2020. It addressed the growing demand of consumers to receive information on the origin of their foods and extend the mandatory origin labelling scheme to further food products, in particular to milk and milk used as an ingredient, meat used as an ingredient, rabbit and game meat, rice, durum wheat used in pasta, potatoes and tomato used in certain tomato products. In the assessment, the Commission stated to believe that extended mandatory origin labelling could influence purchase decisions in such a way that it might increase the sale of regional food products. In regards to the potential costs the transition might entail, the Commission expects 'one-off cost in updating labels' but also anticipates a reduction in costs that operators currently face when adhering to various national origin labelling regulations for specific food products.[221]

220 European Commission, 'Proposal for a revision of the Regulation on Food Information to Consumers (FIC)' <https://food.ec.europa.eu/safety/labelling-and-nutrition/food-information-consumers-legislation/proposal-revision-regulation-fic_en#study-supporting-the-impact-assessment> accessed 29 September 2023.

221 European Commission, 'Inception Impact Assessment on the proposal for a revision of Regulation (EU) No 1169/2011 on the provision of food information to consumers' (Ares(2020)7905364, 23 December 2020) <https://ec.europa.eu/info/law/better-regulation/> accessed 2 October 2023, 5f.

Public consultation process

The inception impact assessment also foresaw a public and targeted consultation process for various stakeholders, including *inter alia* citizens, economic actors, academia, and civil society organisations, to capture their point of view in regards to the proposals. During a 12-week consultation, which was conducted from 13 December 2021 to 07 March 2022, stakeholders were given the opportunity to comment on the aforementioned four legislative areas. The consultation on origin labelling alone received 2,296 contributions, of which the vast majority were submitted by citizens.

The results of the consultation revealed that 93% of respondents are of the opinion that consumers want to know the origin of additional food products. When asked why they consider origin information important, 87% of the participants indicated because such information helps to support producers or the regional economies, enables consumers to make informed food choices (86%) and 80% believe that it is an indicator for the environmental impact of a food product. The provision of origin information was deemed as 'very important' or 'important' across all proposed food categories by most respondents (between 73% and 88% per category). The significance of mandatory origin labelling was, not surprisingly, notably high among participants from consumer organisations, ranging from 90% to 97% across the product categories. In contrast, it was less pronounced among respondents representing business associations, where it ranged from 30% to 41% per product group.[222]

Research activities

In addition, research activities were conducted to provide scientific evidence related to the four proposals. For instance, the Joint Research Centre (JRC) published four corresponding reports, one thereof dedicated to review and synthesise consumer's perception of origin labelling. Based on a systematic literature review of empirical research articles on consumers' understanding and use of origin labelling, the report was guided by the following three research questions:

222 European Commission, 'Factual summary report of the online public consultation in support of the revision of the Food Information to Consumers regulation' (Ares(2022)3403916 03, May 2022) <https://www.foodnet.cz/images/souhrnna_zprava.pdf> accessed 2 October 2023, 1 and 4.

1. Does the origin of a food influence purchase decisions and consumption, and if so, how?
2. Why do consumers find it important to know the origin of the foods they purchase or consume?
3. How do consumers understand and interpret information on the origin of food?[223]

As for the first question, the report came to the conclusion that, in general, there is a strong impact of the country of origin on consumers' purchase decisions whereby domestic products are favoured over foreign ones. However, studies examining the interrelation of origin and other types of labelling indicate that the impact of the purchase factor 'origin' is less significant in the presence of, for instance, an organic label. Moreover, research found that due to time pressure, information overload, and stress when shopping for groceries, consumers may forget to pay attention to origin information.

Two main findings are especially suitable for the purpose of explaining why consumers care about origin information. Firstly, consumers tend to believe that knowing the origin of a product is valuable in discerning high-quality, safe, environmentally responsible, and otherwise superior food items. This perception is grounded in the notion that domestic products, or from certain origins, are of superior quality – even though origin sometimes says nothing about the quality of a food. Secondly, consumers feel responsible for supporting their local farmers and domestic food industries and therefore have an interest in knowing the origin of food. This 'patriotic duty' is further boosted by the identified food ethnocentrism, which is grounded on the common perception of domestic food superiority. Likewise, consumers tend to judge food products from a foreign country based on individual images of that country, personal experiences, similarities with, and distance to the foreign country.

This 'domestic country bias' is additionally disrupted by the insufficient or even ignorant interpretations of information on the origin of food. It is of no surprise that studies suggest that consumers are not aware of the rules and legal specifications of origin labels and

223 Thøgersen J. & Nohlen, H.U, Consumer understanding of origin labelling on food packaging and its impact on consumer product evaluation and choices: A systematic literature review (Publications Office of the European Union, Luxembourg 2022), 2.

therefore misunderstand them. Likewise, a knowledge deficit among consumers in terms of EU labels, such as PDO or PGI labels, was reported.[224]

The report itself points towards a need for more and better information on origin information including enhanced education efforts given the broad misinterpretation and lack of knowledge surrounding origin labels. Besides interventions to familiarise consumers with the diverse origin labels, the report identified a need to educate them on why and how this information could be relevant to them. Moreover, it rightly points to the fact that campaigns, which advertise domestic or regional products solely based on their national origin and not due to the particular properties of the food, are in violation of Art. 34 TFEU and are found to buttress consumer ethnocentrism. One recommendation to reduce the impact of country-biased purchase decisions, is for the EU to engage in more proactive communication to emphasise that food safety, as well as product quality, must meet the same rigorous standards across the entire EU.[225]

Especially noteworthy is the fact that the study's results confirm the key findings of the public consultation: consumer purchase decisions are particularly driven by subjective associations and the belief that domestic foods are superior in regards to safety, health, freshness, taste, environmental impact, etc. compared to foreign food products. The ECJ had always resolutely rejected any MS intervention – be it in the form of a promotion campaign or national mandatory origin labelling measure – which was grounded on consumer preferences only. It seems doubtful that the Commission will now – based on those findings – propose rules which could potentially do exactly what it always defended: pave the way for a renationalisation of the internal market by opening the door for purchase decisions distorted by purely ethnocentric motives.[226]

7.3. Consumer organisation vs. business lobbying groups

The growing demand of consumers for more food transparency and food labelling has not only been identified on a national level but also merged in a European Citizens' Initiative called 'Eat ORIGINal! Unmask your food'. Its goal is to impose mandatory country of origin

224 ibid, 25f.
225 ibid, 27.
226 ibid, 18ff and 25.

indications for all food products in the EU and to ameliorate labelling requirements by putting in place harmonised information on production and processing methods.[227] Moreover, several consumer organisations, such as the European Consumer Organisation (BEUC) relentlessly reiterate the call for more and better food transparency.[228]

Yet, consumer protection initiatives receive opposition by lobby groups representing the agro-food sector. In light of the discussions to extend the list of mandatory country of origin labelling, and in particular in regards to the discussion on milk and dairy labelling, the European Dairy Association, Eucolait or FoodDrinkEurope have not been reluctant to share their concerns.[229] Recurring arguments against mandatory country of origin labelling rules for milk and dairy products are the potential resurgence of protectionist consumer behaviours, the extra processing costs for food business operators which could be passed on to consumers or measure's incompatibility with the free movement of goods.[230]

While each proponent seeks to convince the EU institutions of its arguments, it is evident that both perspectives have their legitimacy. Consumers should be entitled to know where their food comes from, thus being enebaled to make informed purchase decisions. Yet, the origin alone does not allow for any conclusion as to the quality, safety, or environmental standard of the corresponding food. A refragmentation and resurgence of consumer ethnocentrism is to be avoided since it could jeopardise the internal market, which of course would be detrimental to everyone. However, the potential rise in costs for food business operators are a legitimate concern which must be duly considered when drafting new legislation. Hence, unionwide mandatory origin initiatives must balance interests of consumers and those of the agri-food industry while ensuring the integrity of the single market.

---

227 Commission Decision (EU) 2018/1304 of 19 September 2018 on the proposed citizens' initiative entitled 'Eat ORIGINal! Unmask your food' (notified under document C(2018) 6054) [2018] OJ L 244.

228 E.g. The European Consumer Organisation, 'Revision of EU Legislation on Food Information to Consumers. BEUC response to public consultation' <https://www.beuc.eu/position-papers/revision-eu-legislation-food-information-consumers> accessed 10 May 2023.

229 Shankar P, Thin Lei W, Hekman L, 'Lobbies undermine EU's green farming plan' (Deutsche Welle, 19 October 2021) <https://www.dw.com/en/exposed-how-big-farm-lobbies-undermine-eus-green-agriculture-plan/a-59546910> accessed 12 February 2022.

230 See for instance: European Dairy Association, 'Position Paper: Against mandatory origin labelling for milk (European Dairy Association, 23 March 2023) <2023_03_21_EDA_position_against_mOL_rev.pdf (euromilk.org)> accessed 10 September 2023.

7.4. Way forward or a deadlock in future mandatory origin labelling?

What to expect from the further development of mandatory origin labelling across the EU? Noteworthy are the efforts undertaken by the Commission in this regard. The process for revising the FICR is fully underway, the next step would be the publication of a legislative framework for the Farm to Fork Strategy, including new rules on origin labelling. Initially expected for the fourth quarter of 2022 but postponed by one year for the end of 2023, the whole strategy has been confounded after von der Leyen's cryptical announcement of a 'strategic dialog' in her State of the Union speech, interpreted as a circumvention of the Farm to Fork Strategy as a whole.

Furthermore, the process to review the FICR indicates that – at least in the case of origin labelling – consumers are influenced by purely subjective motives based on the supposed superiority of domestic products. Opponents of the initiative could interpret any form of legislative initiative that is fully aware of such existing ethnocentric biases by the Commission as hypocritical, given that national measures based on the same reasons are unacceptable. Advocates of additional Union rules on origin labelling however will likely not be satisfied if there is no new proposition at all. In an attempt to provide an answer for the absence of EU-wide rules, MSs might go for a domestic origin labelling initiative as countermeasures. However, the prospects for success, as outlined in chapter 3 and analysed by the example of Austria are – to put it mildly – modest. It seems that without standardised rules across the EU, the further development of mandatory origin labelling is trapped in a deadlock with MSs having little to no prospect of successful national legislative proposals and the Commission being behind schedule in publishing the legal framework for the Farm to Fork Strategy.

8. Conclusion

The present thesis can be summarised by the following key findings, guided by the three central research questions (*"Which challenges exist in the adoption of national COOL measures and to which extend did the Lactalis judgment influence the scope of application?" "Which factors are decisive for the success of previous national COOL measures?" "Why (not) to expect unionwide origin labelling rules anytime soon?").*

I. Previous national COOL measures are to a large extent not in compliance with applicable Union law

MSs are authorised to extend the scope of food categories subject to mandatory labelling in areas not fully harmonised by the FICR upon the condition that they comply with the strict requirements of the FICR and the provision on the free movement of goods. Chapter 4 gave an overview of previous national COOL measures, notified by eight MSs, and identified some obvious deficiencies in a large number of proposals. Nevertheless, those initiatives were to a large extent approved by the Commission. Hence, the factors that could explain the proposals' success are undetermined. It only remains to observe that good timing (that is, before the Lactalis judgement was decided and the PIR entered into force) seems to be an advantage. Moreover, the ambiguity of the two applicable notification procedures might be beneficial for MSs, as it increases the chances of their proposals being waved through, at least under one Commission's DG.

II. The leeway to adopt national COOL measures for prepacked food products exists only in theory

The analysis of the Austrian draft decree on packaged foods in chapter 5 is found to be emblematic for the current situation of national COOL initiatives: while MSs are in theory free to adopt measures, the strict requirements of Art. 39 FICR, which were further tightened by the ECJ in the Lactalis judgment, restrict the scope of application to such an extent, that there remains practically no leeway for domestic measures at all. Especially the objectively established link between certain qualities of a food and its origin (Art. 39(2) FICR) and a suitable ground of justification (Art. 34 TFEU and Art. 39(1) FICR) seem particularly challenging to prove for the notifying MS.

III. The domestic country bias and discriminatory nature of COOL measures poses serious challenges for the internal market

The underlying discriminatory nature of COOL measures, putting domestic food at an advantage vis-à-vis foreign products and the associated prevalence of ethnocentric tendencies among consumers are factors which can possibly lead to a refragmentation of the internal market. The so-called 'domestic country bias' shows that consumers tend to believe that domestic food products are of better quality or taste than the same products from foreign countries. This is insofar alarming, as the origin alone says nothing about the quality of a food. Still, several studies confirm the existence of such a food stigmatisation, regardless of the country examined. Due to this consumer misconception and the potentially negative effect of COOL measures, the remaining MSs, but also business lobby groups, are especially sceptical in regard to new COOL proposals, despite consumer protection organisations strongly arguing in favour of such measures.

IV. MSs seem to merely have a real scope of application regarding national measures for non-prepacked foods

The Austrian decree on non-prepacked food, subjecting mass catering establishments to indicate the origin or provenance of meat, milk and eggs used as ingredients in meals applies as of 1 September 2023. The absence of applicable harmonised EU regulations on non-packed food in combination with the less stringent provisions of Art. 44 FICR ruling the adoption of national measures in that area, enable a much broader scope of application for MSs. Furthermore, national measures for non-packed food are less controversial at an EU-wide level, as they have little to no effects on the internal market. Nonetheless, Art. 44 FICR reveals some ambiguities, for instance, in regard to the extent and limits of its scope of application and the applicable notification procedure, which should be made subject to further unionwide specifications.

V. The interplay between the two applicable notification procedures works on paper but not in practice, in addition to its transparency deficiency

At several points of the present thesis, the overriding problem of communicating COOL proposals to the Commission became evident. The existence of two notification procedures (under Directive 2015/1535 and the FICR) causes confusion among MSs and can lead to different evaluation results, as DG Santé and DG Grow seem to have different guiding

parameters. Moreover, whereas notifications under Directive 2015/1535 are publicly accessible via the TRIS website and enable a multistakeholder peer-review system, notifications under Art. 45 FICR including associated discussions within the Commission are hardly traceable for citizens. This serious lack of transparency, ignoring public interests, adds up to the overall opaque chaos of national labelling rules.

VI. The Commission could bring order to the existing chaos – but shows reluctancy

One way out of this political and legal disorder could be provided by further EU-wide obligations for mandatory origin labelling. Besides national endeavours to expand the list of mandatory origin labelling of food products, the Commission announced it would 'consider' further proposals under the Farm to Fork Strategy, with a reform process being almost completed. Despite clear indications pointing towards a genuine consumer interest for further origin indications at the EU-level, the Commission shows reluctance to follow such a call. The Farm to Fork strategy was postponed for a year (currently expected for the end of 2023), however, might be further delayed or even replaced by a 'strategic dialogue', as announced by von der Leyen's State of the Union speech 2023.

VII. Interest groups fuel the debates, both at national and EU level

Both at the national and EU level, business lobby groups and consumer representation actively advocate for their interests when it comes to the extension of mandatory origin labelling. While consumer should be entitled to know where their food comes from, food business operators understandably fear the extra bureaucratic efforts and costs, such reforms could entail. It is to be expected that such additional expenses will also be borne by consumers – in a time of inflation and steadily increasing costs of living.

VIII. Mandatory origin labelling in the EU: Trapped in a deadlock

Rightly remains the question of how to best bridge consumer expectations with business interests and internal market considerations. With almost no chance for MSs to successfully comply with the strict requirements of the FICR and the Commission reluctant to propose unionwide legislative measures, mandatory origin labelling in the EU appears to be trapped in a deadlock. At the present situation, it seems that the only way out are EU-wide measures proposed by the Commission, which could ensure a transparent, level playing field across the EU.

9. Bibliography

9.1. Legislation

Regulations

Implementing Regulation (EU) 2018/775 of 28 May 2018 laying down rules for the application of Article 26(3) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, as regards the rules for indicating the country of origin or place of provenance of the primary ingredient of a food [2018] OJ L131/8 (Primary Ingredient Implementing Regulation).

Regulation (EU) 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) 1184/2006 and (EC) 1224/2009 and repealing Council Regulation (EC) 104/2000 [2013] OJ L354/1.

Implementing Regulation (EU) 1337/2013 of 13 December 2013 laying down rules for the application of Regulation (EU) No 1169/2011 of the European Parliament and of the Council 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 [2013] OJ L335/19.

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) 1037/2001 and (EC) 1234/2007 [2013] OJ L347/671.

Regulation (EU) 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [2012] OJ L343/1.

Regulation (EU) 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 [2011] OJ L304/18 (FIC Regulation).

Regulation (EC) No 589/2008 of 23 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs [2008] OJ L163/6.

Regulation (EC) 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) 2092/91 [2007] OJ L189/1.

Regulation (EC) 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs [2004] OJ L139/1.

Regulation (EC) 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [2002] OJ L31/1.

Regulation (EC) 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) 820/97 [2000] OJ L204/107.

Regulation (EEC) 2913 /92 of 12 October 1992 establishing the Community Customs Code [1992] L302/1 (Customs Code Regulation).

Directives

Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification) [2015] OJ L241/1.

Council Directive 2001/110/EC of 20 December 2001 relating to honey [2002] OJ L10/47.

9.2. Jurisdiction

Court of Justice of the European Union

Case C-485/18 *Groupe Lactalis v France* [2020] ECR I-763.

Case C-485/18 *Groupe Lactalis v France* [2020] ECR I-763, Opinion of AG Hogan.

Case C-95/14 *UNIC and Uni.co.pel* [2015] ECR I-492.

Case C-307/13 *Ivansson and Others* [2014] ECR I-2058.

Case C 229/09 *Hogan Lovells International* [2010] ECR I-0000.

Case C-319/05 *Commission v Germany* [2007] ECR I-9811.

Case C-322/01 *Deutscher Apothekerverband eV v 0800 DocMorris NV and Jacques Waterval* [2003] ECR I-14887.

Case C-55/99 *Commission v France* [2000] ECR I-11499.

Case C-210/96 *Gut Springenheide and Tusky v Oberkreisdirektor des Kreises Steinfurt* [1998] ECR I-4657.

Joined Cases C-321/94 to C-324/94 *Pistre and others* [*1997] ECR I-02343.*

Case C-51/94 *Commission v Germany* [1995] ECR I-3599.

Joined Cases C-267/91 and C-268/91 *Keck and Mithouard* [1993] ECR I-6097.

Case 207/83, *Commission v UK* [1985] ECR 1201.

Case 249/81 *Commission v Ireland* (Buy Irish) [1982] ECR 04005.

Case 251/78 *Denkavit Futtermittel v Germany* [1979] ECR 3369.

Case 120/78 *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein* (Cassis de Dijon) [1979] ECR 649.

Case 8/74 *Procureur du Roi v Benoît and Gustave Dassonville* [1974] ECR 837.

National legislative acts including draft acts

Austria

Verordnung des Bundesministers für Soziales, Gesundheit, Pflege und Konsumentenschutz über Angaben der Herkunft von Zutaten in Speisen, die in Einrichtungen der Gemeinschaftsverpflegung abgegeben werden in der Fassung der Bekanntmachung vom 16 März 2023, (BGBl II 65/2023).

Verordnung zur Verpflichtung der Weitergabe von Information über die Herkunft von Fleisch, Milch und Eiern entlang der Lieferkette von Lebensmittelunternehmern in der Fassung der Bekanntmachung vom 20 Dezember 2021, (BGBl II 566/2021).

Begutachtungsentwurf zur Verordnung des Bundesministers für Soziales, Gesundheit, Pflege und Konsumentenschutz über die Verpflichtung zur Angabe der Herkunft von Fleisch, Milch und Eiern als primäre Zutat in verpackten Lebensmitteln (BEGUT_55925AA8_62AC_4D63_8989_6FB222DF66A5) [04 May 2022] ('Ordinance on packaged foods').

Accompanying documentation:

Erläuterungen zum Begutachtungsentwurf [2022] <https://www.ris.bka.gv.at/Dokumente/Begut/BEGUT_55925AA8_62AC_4D63_8989_6FB222DF66A5/Materialien_0001_6986DDD6_509F_4CCA_98BE_28F57C76C34C.pdf> (Explanatory note of the draft decree on packaged foods) accessed 20 September 2023.

Vereinfachte wirkungsorientierte Folgenabschätzung und Vorblatt zum Begutachtungsentwurf [2022] <https://www.ris.bka.gv.at/Dokumente/Begut/BEGUT_55925AA8_62AC_4D63_8989_6FB222DF66A5/Materialien_0002_6C0CF297_9D9F_48CC_8A5B_9439B5D8F62E.pdf> (Impact Assessment) accessed 20 September 2023.

Begleitschreiben zum Begutachtungsentwurf [2022] <https://www.ris.bka.gv.at/Dokumente/Begut/BEGUT_55925AA8_62AC_4D63_8989_6FB222DF66A5/Schreiben_0001_C2910B3E_C1D0_4714_B14E_0147017D6C77.pdf> accessed 20 September 2023.

Begutachtungsntwurf zur Verordnung des Bundesministers für Soziales, Gesundheit, Pflege und Konsumentenschutz über die Verpflichtung zur Angabe der Herkunft von Fleisch, Milch und Eiern in Speisen, die in bestimmten Einrichtungen der Gemeinschaftsverpflegung abgegeben werden (BEGUT_0F1764D3_FB8B_49D0_AB78_F7BB94B44F18) [04 May 2022] ('Ordinance on certain mass catering establishments').

Accompanying documentation:

Erläuterungen zum Begutachtungsentwurf [2022] <https://www.ris.bka.gv.at/Dokumente/Begut/BEGUT_0F1764D3_FB8B_49D0_AB78_F7BB94B44F18/Materialien_0001_83A59632_A51F_4685_BB9A_15AD4FCE2E0F.pdf> accessed 20 September 2023.

Vereinfachte wirkungsorientierte Folgenabschätzung und Vorblatt zum Begutachtungsentwurf [2022] <https://www.ris.bka.gv.at/Dokumente/Begut/BEGUT_0F1764D3_FB8B_49D0_AB78_F7BB94B44F18/Materialien_0002_C553B9A6_F2FD_43A7_B73F_76406C87EF41.pdf> accessed 20 September 2023.

Begleitschreiben zum Begutachtungsentwurf [2022] <https://www.ris.bka.gv.at/Dokumente/Begut/BEGUT_0F1764D3_FB8B_49D0_AB78_F7BB94B44F18/Schreiben_0001_ABEE34E4_C589_4B67_844D_69338AFBB63F.pdf> accessed 20 September 2023.

Finland

Decree n. 885/2021 of the Ministry of Agriculture and Forestry amending section 8 of the Decree of the Ministry of Agriculture and Forestry on the indication of the country of origin of certain foodstuffs. (FINLEX, 885/2021, 15 December 2021) <Decree of the Ministry of Agriculture and Forestry on certain ... 885/2021 - Original statutes - FINLEX ®> accessed 14 September 2023.

Decree n. 154/2019 of the Ministry of Agriculture and Forestry amending section 7a of the Decree of the on the provision of food information to consumers. (FINLEX, 154/2019, 22 January 2019) <https://www.finlex.fi/fi/laki/ajantasa/2014/20140834#P7a> accessed 14 September 2023.

Decree n. 218/2017of the Ministry of Agriculture and Forestry on the indication of the country of origin of certain foodstuffs. (FINLEX, 218/2017, 5 April 2017) <https://www.finlex.fi/fi/laki/alkup/2017/20170218#Pidm45053758502720> accessed 13 September 2023.

France

Décret n. 2022-65 du 26 janvier 2022 modifiant le décret n° 2002-1465 du 17 décembre 2002 relatif à l'étiquetage des viandes bovines dans les établissements de restauration (JORF of 26 January 2022, text n. 7) <Décret n° 2022-65 du 26 janvier 2022 modifiant le décret n° 2002-1465 du 17 décembre 2002 relatif à l'étiquetage des viandes bovines dans les établissements de restauration - Légifrance (legifrance.gouv.fr)> accessed 14 September 2023.

Décret n. 2016-1137 du 19 août 2016 relatif à l'indication de l'origine du lait et du lait et des viandes utilisés en tant qu'ingrédient (JORF of 21 August 2016, texte n.18) <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000033053008> accessed 13 September 2023.

Greece

Law n. 4492/2017, 18 December 2017, Distribution and marketing of fresh and perishable agricultural products and other provisions. (Government Gazette 156/A/18-10-2017) <https://www.e-nomothesia.gr/kat-agoranomikes-diatakseis/nomos-4492-2017-fek-156a-18-10-2017.html> accessed 13 September 2023.

Italy

Decreto 6 agosto 2020 Disposizioni per l'indicazione obbligatoria del luogo di provenienza nell'etichetta delle carni suine trasformate. (20A04874) (GU Serie Generale n.230 of 16 September 2020) <pdf (gazzettaufficiale.it)> accessed 14 September 2023.

Decreto 9 dicembre 2016 Indicazione dell'origine in etichetta della materia prima per il latte e i prodotti lattieri caseari, in attuazione del regolamento (UE) n 1169/2011, relativo alla fornitura di informazioni sugli alimenti ai consumatori. (17A00291) (GU Serie Generale n.15 del 19 January 2017) <pdf (gazzettaufficiale.it)> accessed 14 September 2023.

Lithuania

Draft Order of the Minister for Agriculture of the Republic of Lithuania approving the List of milk and milk products for which declaration of the country of origin of the milk contained as an ingredient is mandatory on labelling and the Requirements for declaration of the country of origin of milk used as an ingredient in milk and milk products (2015/0465/LT), 6 August 2015, <Notification Detail | TRIS - European Commission (europa.eu)> accessed 15 September 2023.

Portugal

Decreto lei n. 62/2017, de 9 de junho, (Diário da República n. 112/2017, Série I of 9 June 2017) <https://dre.pt/dre/detalhe/decreto-lei/62-2017-107495709> accessed on 13 September 2023.

Spain

Real Decreto 1181/2018, de 21 de septiembre, relativo a la indicación del origen de la leche utilizada como ingrediente en el etiquetado de la leche y los productos lácteos. (A-2018-12837) (Boletín Oficial del Estado núm. 230 of 22 September 2018) <https://www.boe.es/eli/es/rd/2018/09/21/1181/con> accessed 15 September 2023.

9.3. Literature

Books and Articles

Ballke C & Kietz M, ‘The Origin Declaration of Food and its Primary Ingredients – A Quick Guide on Regulation (EU) No 1169/2011 and Regulation (EU) 2018/775’ [2020] 15(4) Eur Food & Feed L Rev 316.

Barnard C, *The Substantive Law of the EU: The Four Freedoms* (5th edn, Oxford University Press 2013)

Bock A, Bontoux L & Rudkin J., *Concepts for a sustainable EU food system* (EUR 30894, Publications Office of the European Union, 2022).

Carreno I & Dolle T, ‘A Myriad of EU Member States' Measures on Mandatory Country of Origin Labelling (COOL) of Food Compromise the EU Internal Market’ [2017] 8 Eur J Risk Reg 779

Carreno I, Dolle T & Rovnov Y, ‘Country of Origin Labelling on the Rise in EU Member States - An Analysis under EU Law and the EU's International Trade Obligations’ [2017] 8 Eur J Risk Reg 414.

Constantinescu O & Toma B, ‘Romania's COOL Experiment’ (2018) 13 Eur Food & Feed L Rev 153.

Coutrelis N & Rihouey-Robini L, 'Focus on the French Experiment to Indicate the Origin of Milk and Meat on Some Food Products Labeling' [2017] 12 Eur Food & Feed L Rev 57.

Eičaitė O, ‘Lithuanian Consumer’s Views on Country of Origin Labelling for Milk’ [2016] 16(4) Scientific Papers Series Management, Economic Engineering in Agriculture and Rural Development 97.

European Commission, *Free movement of goods. Guide to the application of Treaty provisions governing the free movement of goods* (Publ. Off. of the Europ. Union 2010).

European Food Safety Authority, *Special Eurobarometer Wave EB97.2* [2022].

Holland D & Pope H, *EU Food Law and Policy* (Kluwer 2004).

Knežević N, Grbavac S & Palfi M ‘Country of Origin – The Importance for Consumers’ [2019] 14(6) Eur Food & Feed L Rev 528.

Obwexer W, ‘Gutachten. Unionsrechtliche Rahmenbedingungen für eine verpflichtende Herkunftskennzeichnung von Zutaten in verarbeiteten Lebensmittel’ [2020] <https://www.verbrauchergesundheit.gv.at/Lebensmittel/Kennzeichnung/Gutachten_Lebensmittelkennzeichnung.pdf?8bgav8> accessed 20 June 2022.

Oliver P and Jarvis M A., *Free movement of goods in the European Community : under articles 28 to 30 of the EC Treaty* (4th edn, Sweet & Maxwell 2003).

Rieke J W, 'Country of Origin Labelling – Trend zur Renationalisierung des Lebensmittelrechts?' [2019] 5 ZLR 625.

Rusconi G & Cozzolino G, 'Country of Origin Labelling of Food Products' [2021] 16 Eur Food & Feed L Rev 112.

Sosnitza O & Meisterernst A, 'C113. Verordnung (EU) Nr. 1169/2011 des Europäischen Parlaments und des Rates betreffend die Information der Verbraucher über Lebensmittel, LMIV' in Sosnitza/Meisterernst (eds), *Lebensmittelrecht Kommentar* (186. Ergänzungslieferung, C. H. Beck 2023).

Sosnitza O, 'Gebotene Irreführung und Verbot von Erlaubtem' [2018] 6 ZLR 743.

Sosnitza O, 'Obligatorische Herkunftskennzeichnung im Lebensmittelrecht' [2016] 4 GRUR 347.

Schroeder W, 'Nationale Herkunftsangaben auf Lebensmitteln und die LMIV - Zugleich eine Besprechung von EuGH "Groupe Lactalis"' [2020] 6 ZLR 754.

Teufer T, 'Aus der Region – Rechtliche Rahmenbedingungen und Fallstricke der Regionalwerbung' (2015) 10 JVL 69.

Thøgersen J. & Nohlen, H.U, *Consumer understanding of origin labelling on food packaging and its impact on consumer product evaluation and choices: A systematic literature review* (Publications Office of the European Union, Luxembourg 2022).

Tosato A., 'The Protection of Traditional Foods in the EU: Traditional Specialities Guaranteed' [2013] 19 Eur LJ 545.

Wennerberg F & Nyman J, *Made in EU How country-of-origin labelling affects the internal market* (Publication of The National Board of Trade Sweden 2020).

European Commission Documents

European Commission, 'A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system' (Communication) COM (2020) 381 final (Farm to Fork Strategy).

European Commission Decision (EU) 2018/1304 of 19 September 2018 on the proposed citizens' initiative entitled 'Eat ORIGINal! Unmask your food' (notified under document C(2018) 6054) [2018] OJ L 244.

European Commission, '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.

European Commission, ‘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 unprocessed foods, single ingredient products and ingredients that represent more than 50% of a food’ COM (2015) 204 final.

European Commission, ‘Report to the European Parliament and the Council on the compulsory indication of the country of origin or place of provenance of meat as an ingredient’ COM (2013) 755 final.

Publication of a communication of approval of a standard amendment to a product specification for a name in the wine sector referred to in Article 17(2) and (3) of Commission Delegated Regulation (EU) 2019/33 2020/C 432/08 (2020/C 432/08) [2020] OJ C432/11.

Publication pursuant to Article 26(2) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs as regards a name of traditional speciality guaranteed (2016/C 176/07) [2016] OJ C176/13.

European Commission, ‘Factual summary report of the online public consultation in support of the revision of the Food Information to Consumers regulation’ (Ares(2022)3403916 03, May 2022) <https://www.foodnet.cz/images/souhrnna_zprava.pdf> accessed 2 October 2023.

European Commission, ‘Inception Impact Assessment on the proposal for a revision of Regulation (EU) No 1169/2011 on the provision of food information to consumers’ (Ares(2020)7905364, 23 December 2020) <https://ec.europa.eu/info/law/better-regulation/> accessed 2 October 2023.

European Commission, ‘Proposal for a revision of the Regulation on Food Information to Consumers (FIC)’ <https://food.ec.europa.eu/safety/labelling-and-nutrition/food-information-consumers-legislation/proposal-revision-regulation-fic_en#study-supporting-the-impact-assessment> accessed 29 September 2023

European Commission, ‘Summary Report of the Standing Committee on Plants, Animals, Food and Feed Held in Brussels on 13 September 2016 - 14 September 2016’ (sante.ddg2.g.5(2016)5835849, 13 – 14 September 2016) <https://food.ec.europa.eu/system/files/2016-10/reg-com_gfl_20160913_sum.pdf> accessed 29 April 2023.

European Commission, ‘Standing Committee on Plants, Animals, Food and Feed Section General Food Law on 1 July 2022’ (sante.g.3(2023)2383955, 1 July 2022) <https://food.ec.europa.eu/system/files/2023-03/reg-com_gfl_20220701_sum.pdf> accessed 29 April 2023.

European Commission, ‘Summary Report of the Standing Committee on Plants, Animals, Food and Feed Held in Brussels on 07 December 2018 (sante.ddg2.g.5(2019)768815, 7 December 2018) <https://food.ec.europa.eu/system/files/2019-02/reg-com_toxic_20181207_sum.pdf> accessed 29 April 2023.

European Commission, ‘Standing Committee on Plants, Animals, Food and Feed Section General Food Law on 05 - 06 October 2017’ (sante.ddg2.g.5(2018)475819, 5 – 6 October 2017) <https://food.ec.europa.eu/system/files/2018-02/sc_phyto_20171005_pppl_sum.pdf> accessed 29 April 2023.

European Commission, ‘Summary Report of the Standing Committee on Plants, Animals, Food and Feed Held in Brussels on 10 October 2016 (sante.ddg2.g.5(2016)6727863, 10 October 2016) <https://food.ec.europa.eu/system/files/2017-04/reg-com_gfl_20161010_sum.pdf> accessed 29 April 2023.

European Commission, ‘Standing Committee on Plants, Animals, Food and Feed Section General Food Law on 12 April 2016’ (sante.ddg2.g.5(2016)2527400, 12 April 2016) <https://food.ec.europa.eu/system/files/2016-10/reg-com_gfl_20160412_sum.pdf> accessed 29 April 2023.

European Commission Notice on the application of the provisions of Article 26(3) of Regulation (EU) No 1169/2011 [2020], OJ C 32/01.

European Commission, ‘2023 State of the Union Address by President von Der Leyen’ (Speech 23/4426, 13 September 2023) <https://ec.europa.eu/commission/presscorner/api/files/document/print/en/speech_23_4426/SPEECH_23_4426_EN.pdf> accessed 13 September 2023.

Notification Detail 2022/338/A: Ordinance of the Federal Minister for Social Affairs, Health, Care and Consumer Protection on the obligation to indicate the origin of meat, milk and eggs as a primary ingredient in packaged foods [10.05.2022] <https://technical-regulation-information-system.ec.europa.eu/en/notification/15495> accessed 11 September 2023.

Submitted stakeholder contributions on the Notification Detail 2022/338/A (listed in chronological order):

Danish Veterinary and Food Administration, [03.06.2022] <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2022&num=338> accessed 11 August 2023.

Food Industries Association of Austria, ‘EU legal assessment of the Austrian Ordinance on indications of origin of meat, milk and eggs as primary ingredient in packaged food (Notification No. 2022/338/A)’ [10.06.2022] <https://technical-regulation-information-system.ec.europa.eu/en/notification/15495/stakeholder-contribution/file/538> accessed 11 August 2023.

Österreichischer Markenartikelverband, ‘Stellungnahme des Markenartikelverbands Österreichs zum Verordnungsentwurf über die Verpflichtung zur Angabe der Herkunft von Fleisch, Milch und Eiern als primäre Zutat in verpackten Lebensmitteln.’ [15.06.2022]

<https://technical-regulation-information-system.ec.europa.eu/en/notification/15495/stakeholder-contribution/file/413> accessed 11 August 2023.

Austrian Association of Craft Food Producers, 'Position Paper – Notification 2022/338/A - Austrian Ordinance on Origin Labelling of meat, milk and eggs as a primary ingredient in packaged foods.' [28.06.2022]
<https://technical-regulation-information-system.ec.europa.eu/en/notification/15495/stakeholder-contribution/file/1182> accessed 11 August 2023.

Wirtschaftskammer Österreichs, 'Verordnung über die Angabe der Herkunft von Fleisch, Milch und Eiern als primäre Zutat in verpackten Lebensmitteln; Stellungnahme' [29.06.2022]
<https://technical-regulation-information-system.ec.europa.eu/en/notification/15495/stakeholder-contribution/file/1184> accessed 11 August 2023.

Liaison Centre for the Meat Processing Industry in the European Union (CLITRAVI), 'Re: CLITRAVI comments on the Austrian draft ordinance of the Federal Minister for Social Affairs, Health, Care and Consumer Protection on the obligation to indicate the origin of meat, milk and eggs as a primary ingredient in packaged foods (TRIS 2022/338/A)' [15 July 2022] <https://technical-regulation-information-system.ec.europa.eu/en/notification/15495/stakeholder-contribution/file/601> accessed 11 August 2023.

Communications by the Austrian government

Anfragebeantwortung durch den Bundesminister für Soziales, Gesundheit, Pflege und Konsumentenschutz Johannes Rauch zu der schriftlichen Anfrage (12068/J) betreffend Verordnungen zur verpflichtenden Herkunftskennzeichnung für Lebensmittel und Speisen – Stand des Notifizierungsverfahrens (Geschäftszahl 2022-0.696.860, 31 October 2022) <https://www.parlament.gv.at/gegenstand/XXVII/J/12068> accessed 14 March 2023.

Bundesministerium für Soziales, Gesundheit, Pflege und Konsumentenschutz, 'Österreichische Stellungnahme im Rahmen des Notifikationsverfahrens zur Herkunftskennzeichnung der primären Zutaten Fleisch, Milch und Ei. Nachweis der Verbindung zwischen Qualität(en) von Lebensmitteln und ihrem Ursprung oder ihrer Herkunft [2022]
<https://www.verbrauchergesundheit.gv.at/Lebensmittel/Kennzeichnung/herkunft/Nachweis_Qualitaet_und_Herkunft.pdf?8j7uv4> (Austrian notification statement) accessed 29 May 2022.

Bundesministerium für Landwirschaft, Regionen und Tourismus, ‘Köstinger zu Herkunftskennzeichnung: „Gesundheitsminister greift Vorschläge der Landwirtschaft auf’ [01 April 2021] <https://www.ots.at/presseaussendung/OTS_20210401_OTS0155/koestinger-zu-herkunftskennzeichnung-gesundheitsminister-greift-vorschlaege-der-landwirtschaft-auf> (accessed 24. August 2023)

Bundesministerium für Soziales, Pflege, Gesundheit und Konsumentenschutz, ‘Information Zur Nationalen Herkunftskennzeichnung’ (*Information zur nationalen Herkunftskennzeichnung - KVG*) <https://www.verbrauchergesundheit.gv.at/Lebensmittel/Kennzeichnung/herkunft/national.html> accessed 6 October 2023

Bundesministeriums für Land- und Forstwirtschaft, Regionen und Wasserwirtschaft (*Herkunftskennzeichnung in Großküchen startet*) <https://info.bml.gv.at/themen/lebensmittel/herkunft-von-lebensmitteln/herkunftskennzeichnung/herkunftskennzeichnung-grosskuechen-startet.html> accessed 6 October 2023

Die Neue Volkspartei Österreichs & Die Grünen, ‘Aus Verantwortung für Österreich. Regierungsprogramm 2021-2024’ (2020).

Kommunikationsplattform VerbraucherInnengesundheit, ‘FAQ zur Herkunft von Speisen in Gemeinschaftsverpflegung, Großküchen’ (*Kommunikationsplattform VerbraucherInnengesundheit*, 2023) <https://www.verbrauchergesundheit.gv.at/Lebensmittel/Kennzeichnung/kennz.html> accessed 10 October 2023.

Kommunikationsplattform VerbraucherInnengesundheit, ‘FAQs zur nationalen Herkunftskennzeichnung’ (*Kommunikationsplattform VerbraucherInnengesundheit*, 9 My 2022) <https://www.verbrauchergesundheit.gv.at/Lebensmittel/Kennzeichnung/herkunft/faq_nat_Herkunft.html#heading_1__Weshalb_wird_auf_nationaler_Ebene_eine_verpflichtende_Herkunftskennzeichnung_fuer_verpackte_Lebensmittel_eingef_hrt_> accessed 29 June 2022.

Newspaper articles

Angerer M, ‘Lebensmittelkennzeichnung: Transparenz oder Tortur?’ (*gast.at*, 21 September 2023) <https://www.gast.at/gastronomie/lebensmittelkennzeichnung-transparenz-oder-tortur-51958?auth=1> accessed 24 September 2023.

Der Standard ‘Schweinehaltung in Österreich trotz Gütezeichens oft katastrophal’ (*Der Standard*, 11 April 2022) <https://www.derstandard.de/story/2000134841974/schweinehaltung-in-oesterreich-oft-trotz-guetezeichen-katastrophal> accessed 6 October 2023.

Der Standard, ‘Verpflichtende Herkunftsbezeichnung für Lebensmittel kommt’ (*Der Standard*, 30 April 2022) <https://www.derstandard.at/story/2000135328688/verpflichtende-herkunftsbezeichnung-fuer-lebensmittel-kommt> accessed 21 June 2022.

Der Standard, ‘Verpflichtende Herkunftskennzeichnung in Großküchen startet mit 1. September’ (*Der Standard*, 16 March 2023) <https://www.derstandard.at/story/2000144557822/verpflichtende-herkunftskennzeichnung-in-grosskuechen-startet-mit-1-september> accessed 6 October 2023.

Fortuna G, Dahm J and Foote N, ‘Commission Chief Envisages Change of Tack on EU Farming Policy’ (*euractiv.com*, 14 September 2023) <https://www.euractiv.com/section/agriculture-food/news/commission-chief-envisages-change-of-tack-on-eu-farming-policy/?_ga=2.2759538.31937742.1695233261-1197901669.1695233260> accessed 6 October 2023

Kamleitner F, ‘Landwirtschaftsministerin Elisabeth Köstinger tritt zurück’ (*lkonline*, 09 May 2022) <https://www.lko.at/landwirtschaftsministerin-elisabeth-k%C3%B6stinger-tritt-zur%C3%BCck+2400+3636504> accessed 21 June 2022.

Kurier, ‘Herkunftsbezeichnung Für Lebensmittel: Das Sagen Die Kantinen-Betreiber’ (*kurier.at*, 6 September 2023) <https://kurier.at/chronik/oesterreich/herkunftsbezeichnung-fuer-lebensmittel-das-sagen-die-kantinen-betreiber/402584207> accessed 6 October 2023

Koch J, ‘Milch, Fleisch, Eier: Österreich führt Herkunftskennzeichnung ein’ *agrarheute* (Munich, 03 May 2022) <https://www.agrarheute.com/politik/oesterreich-herkunftskennzeichnung-zielgeraden-593205> accessed 21 June 2022.

Salzburger Nachrichten, ‘Regierung beschließt Herkunftsbezeichnung für Lebensmittel’ *Salzburger Nachrichten* (Salzburg, 04 May 2022) <https://www.sn.at/wirtschaft/oesterreich/regierung-beschliesst-herkunftsbezeichnung-fuer-lebensmittel-120854335> accessed 21 June 2022.

Shankar P, Thin Lei W, Hekman L, ‘Lobbies undermine EU's green farming plan’ (Deutsche Welle, 19 October 2021) <https://www.dw.com/en/exposed-how-big-farm-lobbies-undermine-eus-green-agriculture-plan/a-59546910> accessed 12 February 2022.

Top Agrar, ‘Herkunftskennzeichnung: Diskussion in Österreich verschärft sich’ (*top agrar online* , 24 February 2022) <https://www.topagrar.com/schwein/news/herkunftskennzeichnung-diskussion-in-oesterreich-verschaerft-sich-12859522.html> accessed 21 June 2022.

Websites

Corvino V, ‘Origine in etichetta, c’è il decreto che proroga l’obbligo’ (*Il Salvagente*, 30 December 2021) <https://ilsalvagente.it/2021/12/30/origine-in-etichetta-ce-il-decreto-che-proroga-lobbligo/> accessed 27 July 2023.

Dongo D, ‘Decrees of origin for pasta, rice, milk, tomato, pork. Theoretical extension to 31.12.22’ (*Great Italian Food Trade*, 05 July 2020) <Decrees of origin for pasta, rice, milk, tomato, pork. Theoretical extension to 31.12.22 - Gift (greatitalianfoodtrade.it)> accessed 11 July 2023.

ECHT-EHRLICH: ‘Lebensmittel-Volksbegehren’ (*ECHT-EHRLICH*, 2022) <https://www.lebensmittelvolksbegehren.at/> accessed 21 June 2022.

EIT Food, ‘Top 5 European food trends in 2023’ (EIT Food, 10 January 2023) <Top 5 European food trends in 2023 - EIT Food> accessed 26 July 2023;

EIT Food, ‘Top 5 European food trends in 2022’ (*EIT Food*, 28 January 2022) <Top 5 European food trends in 2022 - EIT Food> accessed 13 June 2023.

EIT Food, ‘Top 5 European food trends in 2021’ (EIT Food, 20 January 2021) <The top 5 trends for the agrifood industry in 2021 - EIT Food> accessed 26 July 2023.

European Dairy Association, ‘Position Paper: Against mandatory origin labelling for milk (European Dairy Association, 23 March 2023) <2023_03_21_EDA_position_against_mOL_rev.pdf (euromilk.org)> accessed 10 September 2023.

FoodDrinkEurope, ‘Data & Trends: EU Food and Drink Industry’ (2022) FoodDrinkEurope, <FoodDrinkEurope-Data-Trends-2022-digital.pdf> accessed 13 June 2023.

Penz E, ‘Mit 1.09 Startet verpflichtende Herkunftskennzeichnung in Kantinen’ (*VIER PFOTEN in Österreich - Tierschutz. Weltweit.*, 22 August 2023) <https://www.vier-pfoten.at/unsere-geschichten/pressemitteilungen/2023/august/mit-1-09-startet-verpflichtende-herkunftskennzeichnung-in-kantinen> accessed 6 October 2023

The European Consumer Organisation, ‘Revision of EU Legislation on Food Information to Consumers. BEUC response to public consultation’ <https://www.beuc.eu/position-papers/revision-eu-legislation-food-information-consumers> accessed 10 May 2023.

Wirtschaftskammer Österreich, ‘Nationale Herkunftskennzeichnung wird Teuerung bei Lebensmitteln weiter anheizen’ (*Wirtschaftskammer Österreich*, 06 May 2022) <https://news.wko.at/news/oesterreich/nationale-herkunftskennzeichnung-wird-teuerung-bei-lebens.html> accessed 21 June 2022.