

eda Guidelines

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Origin labelling

Implementation of Article 26.3 of the EU Food Information to Consumers Regulation (EU) No 1169/2011 and Commission Implementing Regulation (EU) 2018/775



These dairy industry guidelines on the implementation of Article 26.3 of the EU Food Information to Consumers Regulation (EU) No 1169/2011 and Commission Implementing Regulation (EU) 2018/775 are part of the EDA commitment to ensure an accurate and credible labelling information to the EU consumers, and highlight specific origin links of a product, where the food business operator wishes to do so.

In such cases, labelling of dairy products has to indicate the origin of their dairy ingredients, when different from the final food, in alignment with the relevant legislation, and for an increased credibility ensure that all dairy ingredients are included in the information. Where certain dairy ingredients are added for technological reasons in a small proportion, a solution is given in addition.

Origin labelling is often used as a marketing tool for dairy products. Such labelling is implemented where appropriate, feasible and easy to prove within the normal systems of controls.

The members of the European Dairy Association (EDA) fully support the Commission's work towards harmonisation of voluntary origin labelling according to Article 26.3 of the EU Food Information to Consumers Regulation (EU) No 1169/2011. Against this background, the majority of EDA members¹ have developed common sectorial guidelines which aim to serve as a guidance to the application of voluntary origin labelling for dairy products according to Article 26.3 of the EU Food Information to Consumers Regulation (EU) No 1169/2011.

These EDA sectorial guidelines are part of the EDA commitment to ensure a harmonised and credible labelling information to the EU consumers, in the spirit of the EU Food Information to Consumers

¹ The German EDA members do not share the voluntary EDA Guidelines on the implementation of Art. 26.3 FIC

Regulation (EU) No 1169/2011 (hereafter cited as 'FIC'). This document will be kept under review as needed in light of any future development of the relevant EU legislation.

Summary of the overall approach of these guidelines:

The primary ingredient of a dairy product can be a blend of milk or dairy ingredients² from various origins. In the spirit of these guidelines if a food business operator decides to label the origin of a product, then the primary ingredient (e.g. milk and/or dairy ingredient(s)) should all come from the same member state or region. If that is not the case, the origin of the dairy ingredients needs also to be displayed on the label.

However, where a certain dairy ingredient is added for technological reasons, a small tolerance in dairy products, other than drinking milk, may be accepted.

A. Legal requirements

As a general principle, food information (including origin labelling) shall not be misleading (Article 7 of the FIC Regulation). More precisely, Art. 26 par. 3 FIC foresees that where the country of origin or the place of provenance of a food is given and where it is not the same as that of its primary ingredient:

- **the country of origin or place of provenance of the primary ingredient in question shall also be given;**
- **or the country of origin or place of provenance of the primary ingredient shall be indicated as being different to that of the food).**

Two cumulative requirements must therefore be met: 1) the origin of the food is indicated on the packaging, and 2) its origin is not identical with the origin of the primary ingredient. The reason for providing origin information on a food in a first place can stem from a voluntary decision (marketing) or it can result from an obligation pursuant to art. 26 par. 2 lit a) FIC (where failure to indicate the origin might mislead the consumer as to the true origin of the food³).

² Milk or dairy ingredient, as applicable (e.g. cream in butter)

³ See also recital 4 of implementing regulation 2018/775

B. Definitions

“Country of origin”

Article 2.3 of the FIC Regulation refers the “country of origin of a food” to the Community Custom Code (Article 60 of the Union Customs Code (UCC) Regulation (EU) No 952/2013). Art. 60 UCC indicates that the country of origin is either the country where the product has been wholly obtained (i.e. only one Member State involved) or the country of last, substantial, economically justified processing (i.e. several Member States involved).

The application of the UCC definition has been confirmed by the ECJ (“Champignon case” C-686/17 and “Israel occupied territories case” C-363/18”).

To help understand the EU customs rules on origin and define the origin of a product, the Commission has issued a [Guidance on non-preferential rules of origin](#).

Practical example: Cheese produced in Germany with German milk and Austrian milk – the country of origin of the cheese is Germany, as the last, substantial, economically justified processing took place there.

EDA is of the opinion that repackaging, dilution with water, grating, slicing and similar minor processes for cheeses and dairy products do not cause a substantial transformation thus, they do not determine the country of origin of the product.

In the context of this exercise, EDA includes the “Irish solution” in recognising the island of Ireland (which includes both the Republic of Ireland and Northern Ireland) as a unique origin/place of provenance.

“Place of provenance”

Article 2.2.g) of the FIC Regulation defines “place of provenance” as “any place where a food is indicated to come from, and that is not the ‘country of origin’ as determined in accordance with Article 60 of the UCC”. The place of provenance is therefore any other place than the country of origin, where the food is obtained or where the last substantial transformation of the food took place. This may be a town, a region, a group of countries or the EU. This provision allows labelling different geographical levels below or above the country of origin.

Practical example: for a product, whose last substantial transformation took place in France, the place of provenance could be a French region or the EU.

In the context of this exercise EDA includes the “Irish solution” in recognising the island of Ireland (which includes both the Republic of Ireland and Northern Ireland) as a unique origin/place of provenance.

“Primary ingredient”

Article 2.2.q) of the FIC Regulation defines 2 types of primary ingredients in a food:

- « that represent more than 50 % of that food », or
- « which are usually associated with the name of the food by the consumer and for which in most cases a quantitative indication is required».

C. Identification of the primary ingredient and origin labelling

Please also see the decision tree in the annex of this document.

Explanation:

- A dairy product will usually have a single ingredient making up more than 50% of the product's weight, which will fall under the first part of the definition of “primary ingredient” of the FIC Regulation.
- Individual dairy ingredients that constitute less than 50% of the product weight would fall under the second part of the definition of the FIC Regulation: “ingredients which are usually associated with the name of the food by the consumer and for which in most cases a quantitative indication is required”.
- **Exception:** where a dairy ingredient is added in a **small proportion for technological purposes**, it cannot be considered a primary ingredient under the second part of the definition because the consumer does not associate a technological ingredient with the name of the food. Such technological ingredients could be: milk minerals, milk or whey proteins, caseinates etc.
- **Non-dairy ingredients** such as fruits, sugar and chocolate powder, are not considered primary ingredients according to the second part of the definition. They are not the first decisive ingredient the consumer is looking for when making a purchase. The consumer intends to buy a dairy product and the non-dairy part is secondary in the decision making. Moreover, the consumer does not expect the non-dairy part to come from the same origin as the one claimed for the final food, e.g. the herbs in a cheese or the fruit in a yoghurt. However, this does not prevent a food business operator to voluntarily declare the origin of the non-dairy ingredients.
- **Wording:** EDA considers possible to group the primary ingredients (e.g. “dairy ingredients from X”), but the exact wording remains the responsibility of the operator and should not mislead the consumer regarding the origin of non-primary dairy ingredients (e.g. milk proteins).

As a conclusion, all dairy ingredients would qualify either under the first or second part of the definition of “primary ingredient” except for dairy ingredients used in small proportions for technological reasons. The origin of each of the dairy ingredients must be labelled if different from that of the final food. Non-dairy

ingredients can be considered voluntarily. The exact wording for the origin labelling is laid down in art. 2 of the Implementing Regulation 2018/775, where several options for geographical areas are mentioned.

D. Questions & Answers / examples

The examples are explained in the decision tree enclosed in the Annex.

Basic example – pasteurised milk

Product consisting of only one dairy ingredient from one Member State. Origin labelling can be used to designate the origin of the dairy ingredient, for example pasteurised milk.



1st example: Case A (in the decision tree)

Product: Plain/unflavoured yoghurt, made in France, with the following recipe: skimmed milk (75%), cream, skimmed milk powder, lactose, milk proteins, lactic bacteria

Evaluation:

- The skimmed milk represents more than 50% of the food and comes from France.
- There are two other dairy ingredients usually associated with the name of the food (cream and skimmed milk powder).
- Cream comes from Spain and milk powder comes from Netherlands.
- Lactose, milk proteins and lactic bacteria are dairy ingredients added for technological needs.

Skimmed milk represents more than 50% of the food and there are two other dairy ingredients falling under the second part of the definition. Primary ingredients are therefore skimmed milk, cream and milk powder.

The label could read (*exact final wording to be decided by food business operators - FBOs*):

- "Plain yoghurt produced in France with skimmed milk, cream and milk powder from the EU"
- "Plain yoghurt produced/ made in France with dairy ingredients from the EU"
- "Plain yoghurt produced in France, with skimmed milk from France, cream from Spain and powder from Netherlands"



2nd example: Case B

Flavoured milk drink, made in Denmark, with the following recipe: semi-skimmed milk (95%), lactose, milk proteins, sugar, vanilla aroma

Evaluation:

- The semi-skimmed milk represents more than 50% of the food.
- There are no other dairy ingredients usually associated with the name of the food (lactose and milk proteins cannot be considered as dairy ingredients usually associated with the name of the food as they are added for technological reasons only)

The primary ingredient is the semi-skimmed milk. If it comes from Denmark no specific labelling has to be added, it can be labelled as "Flavoured Danish milk drink".

If the semi-skimmed milk comes from Denmark and Belgium, whatever the proportion, the label could mention (*exact final wording to be decided by FBOs*):

- "Flavoured milk drink – made in Denmark - with milk from Denmark and Belgium"
- "(Flavoured) milk drink, made in Denmark, with milk from the EU"



3rd example: Case C

Fresh cheese with garlic, made in Poland, with the following recipe: fresh cheese from pasteurised milk 40%, cream 30%, skimmed milk powder, milk proteins, salt, garlic 0.6%, pepper.

Evaluation:

- No dairy ingredient represents more than 50% of the food.
- There are several dairy ingredients, usually associated with the name of the food (pasteurised milk, cream, skimmed milk powder). Milk and cream come from Poland, skimmed milk powder comes from Germany.

The primary ingredients are all the dairy ingredients usually associated with the name of the food (cheese, cream, skimmed milk powder).

The label should mention (*exact final wording to be decided by FBOs*):

- "Fresh cheese with garlic made in Poland, with milk and cream from Poland and skimmed milk powder from Germany"
- "Fresh cheese with garlic made in Poland, with milk, cream and skimmed milk powder from the EU", or
- "Fresh cheese with garlic made in Poland, with dairy ingredients from the EU"

4th example: Case D

Product: Drink based on fermented milk, made in the Netherlands, with the following recipe: water (50%), fermented milk (45%), milk proteins, salt.

Evaluation:

- No dairy ingredient represents more than 50% of the food.
- There is only one dairy ingredient usually associated with the name of the food (fermented milk). It comes from the Netherlands.

Fermented milk is the primary dairy ingredient and comes from the Netherlands, therefore there are no specific mentions to be labelled. The product could be labelled "Dutch drink based on fermented milk".

Explanation of common terms, symbols or geographical statements which are excluded from the scope of the Implementing Regulation (EU) n° 2018/775

The following indications are **not to be considered as voluntary origin information** and thus do not trigger the obligation to label the country of origin or place of provenance of the primary ingredient or of the food itself:

- The name, business name or address of the food business operator on the label of a product (Article 2.2 g) of the FIC Regulation,
- Identification marks provided under Regulation (EC) 853/2004 (recital 9 of the implementing Regulation (EU) n 2018/775),
- Geographical terms or statements included in names protected under Regulation (EU) 1151/2012 (Article 1.2) of the implementing Regulation (EU) n 2018/775),
- Trademarks and brands clearly linked to a producing company, including pictures, symbols or colours which are part of the trademark of a food business operator (Directive 2008/95/EC), (Article 1.2) of the implementing Regulation (EU) n 2018/775)
- Mandatory indications in specific cases, as sometimes foreseen by third countries (often called "made in" or equivalent statements such as "produced in") displayed non-prominently which consequently do not intend to provide information to the European consumer on the country of origin (or place of provenance),

- Geographical statements or terms included in, or accompanying the name of the food, where they are clearly intended to refer to a customary name or to specific manufacturing practices in certain countries or places, well known by normally informed and reasonably circumspect consumers (Article 1.1) of the implementing regulation (EU) n 2018/775),
- The following indications of specific manufacturing practices with terms such as: "kind", "type", "Greek style", "Spanish recipe" should not be considered as an origin indication as these expressions aim at providing description of a taste, production method/recipe, characteristic of the product,
- Generic names/ Common denominations including a geographical reference but that have lost their original meaning and in the common understanding indicate a particular dairy recipe or taste should not be considered as an indication of origin/provenance. Examples include: Emmental, Camembert, Brie, Gouda, Edam, "crème Chantilly", "petit Suisse", "crème anglaise", "American cheesecake", "Istanbul" cheese.

Useful links

[Commission Implementing Regulation \(EU\) 2018/775](#) on rules for the application of Article 26(3) of Regulation (EU) No 1169/2011, as regards the rules for indicating the country of origin or place of provenance of the primary ingredient of a food

[Commission Notice](#) on the application of the provisions of Article 26(3) of Regulation (EU) No 1169/2011

[Regulation \(EU\) No 1169/2011](#) on the provision of food information to consumers

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Annex. Decision tree

FBOs should always consider carefully if origin labelling is appropriate

Are all dairy ingredients from the claimed country?

YES

Country of origin is understandable

NO

Is one of the dairy ingredients (called X) more than 50% of the food?

YES

Is there any other dairy ingredient(s) usually associated with the name of the food by the consumer * ?

YES

NO

CASE A
Label both indications of origin:
- That of X
- That of dairy ingredients if different from that of X

CASE B
X is the primary ingredient. The origin to label corresponds to the origin of X.

NO

Is there one or more other dairy ingredients usually associated with the name of the food by the consumer *?

YES, several

CASE C
Indicate all origins OR "other origin" ("EU")

YES, just one

CASE D
The dairy ingredient is the primary ingredient. The origin corresponds to that of this ingredient

NO

~~**CASE E**
There is not primary ingredient~~

this case does not exist



Origin Labelling