CRÓNICA DE UNA MUERTE ANUNCIADA? THE ECJ JUDGMENT *LACTALIS* AND WHAT'S LEFT OF THE "MADE IN" QUESTION IN THE EUROPEAN UNION

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Abstract

The EU Regulation 1169/2011 on food information to consumers provided many exceptions to the rule which states the general irrelevance of origin in food labelling and stated that Member States have the possibility to impose further mandatory information about origin/place of provenance for some categories of quality products.

On this ground, many Member States introduced in recent years national rules about origin, feeding the so-called "battle on transparency and made-in declarations".

The European Court of Justice in the judgment in comment stated that:

— The general rule contained in Art. 26.2 of the Regulation, although laconic, is an absolute pre-emption of the matter.
— Art. 39, which allows Member States to add some further mandatory particulars to the list of the Regulation, is limited to products whose qualities depend on the geographical origin and only at the condition that consumers consider this information essential;

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— The risk of deterioration of milk, due to the long-distance transport is not covered by Art. 39.

In this way, a window of opportunity seems definitely closed for those who support the "made-in battle", considering that the ECJ has adopted an orthodox approach, coherent with the rules of free circulation of goods in the internal market.

This comment, starting from this point, highlights the consequences in the short term of this judgment, and envisages how in the future this fight could carry on.

Keywords

Food information to consumers; Origin; place of provenance; food labelling; mandatory additional information; pre-emption; free circulation of goods; national rules; supremacy; country of origin labelling; made in.

¿CRÓNICA DE UNA MUERTE ANUNCIADA? LA SENTENCIA DEL TRIBUNAL DE JUSTICIA EN EL ASUNTO *LACTALIS* Y LO QUE QUEDA DEL PROBLEMA DE *MADE IN* EN LA UNIÓN EUROPEA

Resumen

El Reglamento n.º 1169/2011 (UE) relativo a la información a los consumidores sobre los alimentos preveía numerosas excepciones a la regla general de la «irrelevancia» tendencial de la indicación del origen del producto en el etiquetado, así como que los Estados miembros podían imponer la obligación de añadir información adicional sobre el origen de determinadas categorías de productos con determinadas cualidades.

Sobre esta base, numerosos Estados miembros han ido introduciendo disposiciones a tal efecto en los últimos años, estimulando la campaña a favor o en contra del llamado «Hecho en» (*Made in*). El Tribunal de Justicia dictaminó que:

— La regla genera lo establecido en el art. 26.2, aunque expresada de forma sucinta, constituye una forma de preferencia absoluta en la materia.
— El art. 39, que autoriza a los Estados miembros a añadir determinada información obligatoria adicional a la impuesta por el Reglamento, se limita únicamente a los productos cuyas cualidades dependen del origen geográfico y solo si dicha información puede considerarse necesaria para los consumidores.
— El riesgo de deterioro de la leche debido al transporte no entra en las condiciones previstas en el art. 39.

Esta decisión supone una contrariedad para los defensores de la transparencia sobre el origen, dado que, en su sentencia, el Tribunal de Justicia interpreta el

reglamento en cuestión de la manera más acorde posible con la libre circulación de mercancías.

Teniendo en cuenta lo dicho, nuestro comentario trata de resaltar las repercusiones a corto plazo de la sentencia y plantea la hipótesis de cómo, a largo plazo, la polémica sobre el *Made in* podría continuar.

Palabras clave

Información a los consumidores sobre los alimentos; indicación del origen; lugar de procedencia; información obligatoria adicional; preferencia; libre circulación de productos; reglamentos nacionales; primacía; etiquetado del país de origen; *made in*.

CRÓNICA DE UNA MUERTE ANUNCIADA? L'ARRÊT *LACTALIS* DE LA COUR DE JUSTICE ET CE QUI RESTE DU PROBLÈME DU *MADE-IN* DANS L'UNION EUROPÉENNE

Resumé

Le Règlement 1169/2011/UE sur l'information des consommateurs concernant les denrées alimentaires avait prévu de nombreuses exceptions à la règle générale de la tendance à la «non-pertinence» de l'indication d'origine sur l'étiquette. Par conséquence, les États membres pouvaient imposer des informations supplémentaires concernant l'origine de certaines catégories de produits de qualité.

Sur cette base, nombreux États membres ont introduit des dispositions à cet effet pendant ces dernières années, alimentant la bataille sur le soi-disant «Fabriqué en» (*Made in*).

La Cour a statué que:

— La règle générale contenue à l'art. 26.2, bien que «laconique», est une forme de préemption absolue de la matière.
— L'art. 39 qui autorise les États membres à ajouter certaines informations obligatoires à celles imposées par le règlement est limité aux seuls produits dont les qualités dépendent de l'origine géographique et uniquement si les consommateurs estiment que ces informations sont nécessaires.
— Le risque de détérioration du lait dû au transport ne relève pas des conditions de l'art. 39.

Cela ferme une fenêtre d'opportunité aux partisans de la transparence sur l'origine, étant donné que la Cour interprète le règlement de la manière la plus compatible possible avec la libre circulation des marchandises.

Le commentaire, en prenant note de cela, met en évidence les répercussions à court terme de cet arrêt. En plus, on émet l'hypothèse sur comment la bataille sur le *Made in* pourrait se poursuivre à long terme.

Mots clés

L'information des consommateurs sur les denrées alimentaires; système d'étiquetage du pays d'origine; lieu de provenance; informations obligatoires; préemption; libre circulation des marchandises; réglementations nationales; primauté; étiquetage indiquant le pays d'origine; *made in*.

CONTENTS

I. INTRODUCTION

In order to describe the "*Made-in"* labelling of food question in the European Union legal order one could resort to literature: to the famous novel by García Márquez *Crónica de una muerte anunciada*, as an example, in order to explain who dishonoured who, and whether the idea of a European identity – built on national characteristics – was murdered in revenge or for defence. Or, more simply, one could borrow the pithy statement of James Agee: "the mere attempt to examine my own confusion would consume volumes"!

Indeed, for a good forty years we have been witnessing an exhausting back-and-forth on the information about origin and on the room for manoeuvre of the Member States in this field: from German wines[2] to Irish jewellery,[3] passing through clothing and textile goods[4] and Italian footwear,[5]

[2] See the Judgments of the European Court of Justice of 20 February 1975, Commission v Germany, 12/74, EU:C:1975:23, and of 12 October 1978, Joh. Eggers Sohn & Co. v Freie Hansestadt Bremen, 13/78, EU:C:1978:182.

[3] See the Judgments of the European Court of Justice of 17 June 1981, Commission v Ireland, 113/80, EU:C:1981:139, and of 24 November 1982, Commission v Ireland, 249/81, EU:C:1982:402.

[4] See the Judgment of the European Court of Justice of 25 April 1985, Commission v United Kingdom, 207/83, EU:C:1985:161.

[5] See the Judgment of the European Court of Justice of 16 July 2015, Unione Nazionale Industria Conciaria (UNIC) and Unione Nazionale dei Consumatori di Prodotti in Pelle, Materie Concianti, Accessori e Componenti (Uni.co.pel) v FS Retail and Others, C-95/14, EU:C:2015:492.

the battles on this topic has involved the whole evolutionary arc of European integration and forced the European Court of Justice to a constant interpretation and reconstruction of the EU juridical framework on this matter.

In the food sector things seemed to be long-settled thanks to a fixed regulatory approach, which had been continuing unaltered starting from the first directive on food labelling, presentation and advertising approved in 1979 (dir. 79/112/CEE)[6] to the directive 2000/13/EC[7] in the early 21st century.

When the European Commission presented the draft regulation on food information to consumers,[8] in 2011, the temptation to change the "traditional" minimalist approach to the matter, based on the orthodox application of the rules on the free circulation of goods in the internal market, seemed to prevail.

The EU Legislator seemed driven by a "new approach" to go beyond the Pillars of Hercules of the "pure" proportionality: once the Pandora's box of national identity was opened the ambitions that emerged are in the public eye.

The judgment in comment is simply an attempt to put the evils back in the box: with what degree of success will be assessed in the final remarks of this comment.

II. REGULATORY AND JUDICIAL ISSUES

In order to understand the juridical context in which the *Lactalis* judgment[9] takes place, first of all we need to take a step back and spend a few

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6 See the Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ L 33, 8.2.1979, p. 1–14).

7 See the Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ L 109, 6.5.2000, p. 29-42).

8 Which became the Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18–63).

9 See the Judgment of the Court of 1 October 2020, Groupe Lactalis v Premier Ministre and Others, C-485/18, EU:C:2020:763.

words on the reconstruction of the regulatory vicissitudes that are behind the judgment.

The need to give consumers information about the origins of foodstuff had been taken up and resolved by the directives that, starting from 1979, have harmonised the food labelling issue.

The rule on this point was both simple and coherent with the rationale of the free circulation of goods in the single market: the specification of origin should be considered "mandatory" only if the failure to indicate it might mislead the consumer as to the true country of origin or place of provenance of the food.[10]

In other words, without any evidence of an overriding requirement (e.g. health risks, fraud, consumer protection, fair competition etc.) and proportionality, no mandatory particulars at a national level could have been imposed with regard to indicating the origin or place of provenance of foodstuff. Consequently, in these circumstances food business operators remained free of sourcing their raw materials from anywhere, as well as deciding where to carry out the last substantial transformation.

Moreover, this approach was coherent with the established Case-law of the European Court of Justice, repeatedly pledged to highlight the general irrelevance of this kind of information, or even the unlawfulness of "presumptions" on this matter.

The coherence with this policy remained unchanged until the repealing of the EU regulatory framework on food labelling, presentation and advertising in 2011.

In this occasion, the Member States who were more interested in a different interpretation of the European market integration, supported by the European Parliament, required a wider approach with regard to the concern for transparency, which was the basis of the well-known nationalistic logic for a long time.

1. THE EU REGULATION Nº 1169/2011 AND ITS INNOVATIONS IN THE "MADE IN" ISSUE

Art. 26 of the EU Regulation 1169/2011 contains a number of exceptions to the above-mentioned general rule.

[10] See Art. 3, par. 1, point 7 of the Directive 79/112/EEC cited and Art. 3, par. 1, point 8 of the Directive 2000/13/EC, *cit*.

In particular, this article provided a juridical basis for many specific implementations of the rule on mandatory- origin in food labelling, which are still ongoing.

Paragraph 2 introduces a first general exception with regard to fresh meat (other than beef products) by requiring the indication on the labelling of the place of rearing and slaughtering of the animals.

Paragraph 3 states that in case of a primary ingredient (more than 50 % in weight of the final foodstuff) with a different country of origin or place of provenance with respect to the final foodstuff (and the latter has a specific indication of the Country of origin in its labelling), the food business operator shall give also the information on the country of origin of the primary ingredient or indicate that its origin/place of provenance is not the same as the final foodstuff.

This rule was implemented in 2018 by the regulation of execution of the European Commission no. 2018/775/EU,[11] applicable from April 2020, which contains the criteria for displaying this specific information on the labelling.

Last but not least, paragraph 5 of Art. 26 states that the European Parliament and the Council can adopt further regulations on the labelling with regard to the origin of many different types of products, such as milk, milk used as an ingredient in dairy products, unprocessed foods, single-ingredient products, ingredients that represent more than 50 % of a food.

This part of the rule has never been implemented, because the European Commission presented to the other Institutions a number of "impact-assessment reports" which showed the excessive costs of the application of such rules in respect to the small benefits for consumers.

To this framework – that, to be honest, seems to be already quite fragmented – one should add the provisions of Art. 39 of the Regulation 1169/2011/EU, according to which Member States can adopt further national rules on this topic requiring additional mandatory particulars for specific types of food, justified on the grounds of the protection of public health (letter "a"), the protection of consumers (letter "b"), the prevention of "fraud" (letter "c"), the protection of I.P. rights/ geographical indications or the prevention of unfair competition (letter "d").

[11] See the 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 (OJ L 131, 29.5.2018, p. 8-11).

In such circumstances, the possibility of "adding" mandatory particulars concerning food origin to the list provided by Art. 9 of the Regulation is conditioned by the proof of a link between certain qualities of the food and its origin or provenance, and the evidence that the majority of consumers attach significant value to the provision of that information.

2. NATIONAL REGULATORY INITIATIVES

The many different national rules on the discussed topic that have been approved during the last three years – among which also the French decree that generated the judgment here in comment – are all based on some common statements:

1. The general rule related to the (assumed irrelevance of) information on the origin of foodstuff cannot be considered a full pre-emption of the matter, as is highlighted by the many exceptions contained in Art. 26 of the EU Regulation 1169/2011.
2. In particular, the provisions of paragraph 5 – that allow further interventions on the origin-labelling of milk, mono-ingredient products or other agricultural products – confirm that the basic regulation is not exhaustive in character;
3. Furthermore, the possibility to adopt national rules on the same topic is evidence that this discipline is incomplete.

The French decree on the labelling of the origin of milk,[12] contested by *Lactalis,* was based precisely on these assumptions.

The rule, applicable since January, 17th, 2017 to December, 31st, 2018, required that

> The labelling of prepacked foods within the meaning of Article 2 of [Regulation No 1169/2011] shall comply with the provisions of this Decree where such foods contain: 1° milk; 2° as an ingredient, milk used in the milk products mentioned in the list in the Annex (…) The labelling of prepacked foods shall indicate the origin of the ingredients mentioned in items 1 to 3. (…) Article 3: The indication of the origin of the milk or of the milk used as an ingredient in the milk products referred to in Article 1 shall include the following particulars: 1° "Country of collection: (name of the country in which the milk was collected)"; 2° "Country of packaging

[12] See the French Decree No 2016-1137 of 19 August 2016 on the indication of the origin of milk, and of milk and meat used as ingredients (JORF of 21 August 2016, text nº 18).

> or processing: (name of the country in which the milk was packaged or processed)". II. By way of derogation from I, where the milk or milk used as an ingredient in milk products has been collected, packaged or processed in the same country, the indication of origin may take the form: "Origin: (name of the country)". III. By way of derogation from I and II, where the milk or milk used as an ingredient in milk products has been collected, packaged or processed in one or more Member States of the European Union, the indication of origin may take the form: "Origin: EU". IV. By way of derogation from I and II, where the milk or milk used as an ingredient in milk products has been collected, packaged or processed in one or more States that are not members of the European Union, the indication of origin may take the form: "Origin: Non-EU".

In its appeal to the *Conseil d'Etat* the French company Lactalis claimed the incompatibility of the French decree with arts. 28, 38 and 39 of the EU Regulation 1169/2011 and, in particular, that the general rule contained in Art. 26.2 of the Regulation had to be considered exhaustive in character (so, incompatible with a national intervention on the matter), or, in the alternative, contested the lack of the two requisites required by Art. 39: the agro-environmental link between the product and its qualities, and, at the same time, the reputation of the product on the market.

The preliminary rulings of the *Conseil d'Etat* is related to this scenario, and is aimed to clarify the extension and the scope of the EU general discipline on this matter.

III. THE ANSWERS FROM THE EUROPEAN COURT OF JUSTICE: THE EXHAUSTIVE CHARACTER OF THE GENERAL RULE ON FOOD ORIGIN LABELLING AND THE RELATIONSHIP BETWEEN ART. 26 AND ART. 39 OF THE REGULATION Nº 1169/2011/EU

The answers from the ECJ to the preliminary ruling in comment are inspired, basically, by a literal interpretation of the text of the rule, and only marginally by a teleological evaluation.

With regard to the first question, the Court states that Arts. 9 and 26.2 of the regulation on food information to consumers lay down a clear discipline with regard to "origin" as a mandatory particular of foodstuff labelling.

Although this provision implies a case-by-case evaluation, according to the Court its uncertainty does not preclude the exhaustive nature of the Regulation on this point.

In particular the judgment highlights that

> it follows from Art. 39 of Regulation No 1169/2011 that, first, the particulars which the Member States may require must be 'additional' as compared with those provided for in Regulation No 1169/2011 itself, which include, as stated in paragraph 27 above, the indication of the country of origin or place of provenance of foods, where failure to indicate this might mislead the consumer. It follows that such indications must not only be compatible with the objective pursued by the EU legislature by means of the specific harmonisation of the matter of mandatory indication of the country of origin or place of provenance but also form one coherent whole with that indication.[13]

This point of view confirms the evaluation of the General Advocate in his conclusions (point nº 23), where he stated that

> the obligation for the Commission, under Art. 26(5) of No 1169/2011 to submit reports to the European Parliament and the Council regarding the mandatory indication of the country of origin or place of provenance of milk, cannot prejudge whether or not this regulation has harmonised the rules in respect of the indication of the country of origin or place of provenance of milk. Indeed, the only conclusion that can be drawn from such an obligation is that that indication is not currently mandatory under EU law.[14]

With regard to the second and third questions, the Court clarifies that if, on one hand, the general rule contained in Art. 26.2 excludes that national legislations might specify the conditions according to which food business operators shall consider mandatory the specification in the labelling of the foodstuff origin, on the other hand this does not imply that Member States cannot add some elements to the list of mandatory information to consumer, as per Art. 9 of the general regulation 1169/2011/EU. In fact, Art. 39 establishes that Member States may introduce national provisions on mandatory indications on country of origin or place of provenance. However, as mentioned above, the rule specifies both the grounds for these additional requirements, and the conditions necessary and sufficient in order to move in that direction.[15]

With regard to the second point, the Court states that the requisites provided by Art. 39.2 shall be present and assessed in sequence: so, the

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[13] Judgment of the Court of 1 October 2020, *Groupe Lactalis v Premier Ministre and Others, cit.*, paragraph 31.

[14] Conclusions of the General Advocate Hogan, delivered on 16 July 2020, EU:C:2020:592, point 23.

[15] *Ibid.*, paragraph 35.

Member State shall first of all ascertain if the product has quality characteristics closely connected to the place of the provenance; then it must demonstrate that consumers generally attribute a significant value to this information, so that it should be considered necessary.[16] This point of the judgment is the only one in which the Court adopts a teleological approach.

Moving from the previous judgments *Psagot*[17] and *Breitsamer und Ulrich*,[18] the ECJ Judges highlight, once again, that information to consumers should be fair, objective and impartial. These elements would not be assured if the national legislation were only based on the expectations of consumers.[19] This Court's reasoning explains why the Judges consider the risk of deterioration of milk during transportation a general justification for the adoption of these kinds of rules.

It is important to emphasize that according to the ECJ the notion of "quality" contained in Art. 39 is connected exclusively to refers only to the qualities which distinguish the foods that possess them from similar foods which, due to their different origin or different provenance, do not possess them. So,

> the resilience of a food, such as milk or milk used as an ingredient, to transport and the risk of deterioration during transit cannot be classified as a 'quality' within the meaning of Art. 39(2) of Regulation No 1169/2011, in so far as such resilience has not been proven to be linked to a specific origin or provenance, it can thus be possessed by similar foods that do not have that origin or provenance and it can therefore be guaranteed independently of that origin or provenance.[20]

IV. FINAL REMARKS

The ECJ judgment will have immediate consequences and some long-term effects on the age-old discussion of the "*made in*" labelling issue.

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16 *Ibid*., paragraph 42.

17 See the ECJ Judgment of 12 November 2019, Organisation juive européenne and Vignoble Psagot, C-363/18, EU:C:2019:954, paragraphs 52-53.

18 See the ECJ Judgment of 22 September 2016, *Breitsamer und Ulrich*, C-113/15, EU:C:2016:718, paragraph 69.

19 Judgment of the Court of 1 October 2020, *Groupe Lactalis v Premier Ministre and Others, cit.*, paragraph 43-44.

20 *Ibid*., paragraph 51.

With regards to the immediate consequences, the conflict between the many national decrees that have introduced various requirements for the declaration of origin or provenance of foodstuff with the general EU regulation of food information to consumers now appears evident.

According to the ECJ judgement, the majority of these national rules should be subjected to Art. 39 of the Regulation 1169/2011, but they could be considered compatible with it only if intended to complete the obligatory information provided by Art. 9 with indications on geographical location of the food chain production.

These rules should also protect consumers from the risk of fraud or unfair commercial practices and limited to specific categories of products for which the quality is connected to the origin and reputation.

These requirements seem to be so strict that it is legitimate to doubt the existence of such condition, apart from products that could potentially become part of the realm of Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI).

We should also add to these elements the full effectiveness of the regulation of execution of the EU Commission no. 2018/775/EC on information about origin or provenance of primary ingredients (more than 50 % in weight of the processed foodstuff) that establishes an absolute pre-emption closing any further space for manoeuvre for the national legislator also on this point.

So, it can be expected (and, from many points of view welcome) that this kind of national rules will be repealed soon or not extended in time (Pullini, 2020; *contra* Galizia, 2020).

The effects of the judgement in comment, however, could go beyond the "sterilisation" of rules approved over the years by Member States based on misunderstanding that was generated by the construction of Art. 26 of the Regulation1169/2011/EU. It could have a direct impact on the general discussion about the usefulness and legitimacy of "*made in*" claims on labelling, presentation and advertising of food products.

It is well-known that this topic has generated contrasts between those who consider that these mandatory indications of the geographical location of the food production chain places an exceptionally heavy burden on the shoulders of consumers (*i.e.*: the moral burden of a "political" choice: to show solidarity with local products or to turn their backs on the community for mere reasons of cost)[21] (Hojnik, 2012: 309; Gonzalez Vaqué, 2014: 24), and

[21] See, in particular, Hojnik (2012: 309), who stresses that consumer must have "a choice to buy from a large supermarket chain, when price and variety are the consumer's prime

those who, on the contrary, consider transparency of information to be a fundamental tool for a reintroduction of fair competition on the market and the "sovereignty" of the consumer (Shuibhne, 2004:81; Masini, 2011: 576; Jagielska y Jagielski, 2012: 336).

As highlighted in the introduction of this comment, in the past the orthodox interpretation of the single market integration led to a strict interpretation of the general rule on the mandatory indication of origin in foodstuff labelling, intended as an exception to the free circulation of goods, that needs to be assessed case-by-case.

The introduction of Art. 26 of the regulation was welcomed by some Member States and many social entities as a turning point in the European integration, and was considered a possible new starting point for a different approach to the economic and social development in Europe.

However, the *Lactalis* judgment could close this chapter from the juridical point of view, qualifying as a misunderstanding the more progressive and open-minded interpretations of this matter.

In fact, the Court's approach is still anchored to the classic architecture of the Internal Market – also formally – as an anti-discrimination law in transnational issues.

The arguments set out in the *Lactalis* judgment leave little or no space to the possibility of an evolution towards the "identarian" approach proposed by some Member States in the name of solidarity, protection of national identities or respect for traditions and social rights.

So, the European Internal Market remains conceived as an economic space in which it is necessary to reduce the differences, which are not anchored to relevant objective factors, in order to protect the free circulation of goods.

This interpretation of the economic integration seems to clash with the emerging "constitutional" dimension of the European Union, based on solidarity and the elements of the European identity: freedom, subsidiarity and the central importance of the individual, intended as values without which we cannot build a real cohesion between the Member States and people in Europe (Micklitz, 2016: 22).

As a matter of fact, consumers cannot or are not able to express their preferences unless based on objective and "tangible" factors, even if they are formally considered to be at the center of competition in the European market.

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concern, without feeling guilty or being burden by the thought that their money is a vote, which (they) can use every time (they) go shopping".

The valorisation of "diversities" as a competitive factor for countries (based on intangible elements, such as the productive traditions, social environment, and the added value of some factors such as the "*made in*" declarations, even if it is not closely connected to objective characteristic elements) are, in this way, denied or relegated to a mere voluntary initiative of single producers who can – according their exclusive autonomy – decide whether to use the "*made in*" as a promotional factor.

Consumers stay out of political games and remain passive spectators of rights, choices and freedoms of others.

A similar development (which should be cultural, before becoming juridical) should be promoted by the "political level" and not left to the Court of Justice, as has already been suggested elsewhere (Rubino, 2017: 195-205).

In fact, the European Court of Justice, even though the protagonist of the main drives to the development of the European integration in many key-steps of European Union law, remains nonetheless anchored to its "juridical" (precisely: "interpretative") function, and for this reason is limited by its own "jurisdiction".

The task of going beyond the idea of an internal market which eliminates non-tangible national differences, which – to be honest – seems to be obsolete, is a matter for policy, and for this reason is a duty of the negotiation between Member States and EU decisional institutions.

In other words, the power to update the idea of European integration is contained in the legislative capacity, and it is from this point that the "*made in*" battle might re-start.

Member States interested in making the intangible values a factor of competitiveness in the internal market should restart by the implementation of Art. 26 of the Regulation 1169/2011/EU (and from the similar rules contained in other EU regulations on other products, such as cosmetics, timber products, fashion etc.), aiming for a general update of the legislative approach to this matter.

In the specific food sector, it could be useful to discuss the possible repealing of the EU Regulation on food information to consumers, started with the recent proposal by the new EU Commission.[22]

[22] See the proposal of the EU Commission (Ares(2020)7905364 - 23/12/2020), available at https://bit.ly/3ezccWr, where it is possible to read that "The objective of the action is to allow consumers to better identify the origin of food and to facilitate consumers' informed and sustainable food choices. Consumers are increasingly affected by a range of considerations when making food decisions, including the origin of the food and the length of the food supply chain. This initiative will ensure that consumers

There still are spaces in order to affirm that the value of a foodstuff can be determined also by intangible factors, such as its symbolic function (being representative of a population and a "terroir"), the know-how of people who contributed historically to the creation of the "recipe" and, more in general, the capability to express the values of a culture and a society, synthetically but efficiently expressed by the "*made in*" declaration.

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across the EU receive the same information on origin. Simultaneously, this will preserve the integrity of the single market and establishes a level playing field across the EU. The Commission is aiming to propose the extension of the mandatory origin or provenance indication to more food products and ensure a full harmonisation in this area. On the basis of the existing data8 , the following foods were identified as those in which consumers have particular interest to know where they are coming from: 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. The impact of the extension of mandatory origin labelling to the aforementioned foods will be assessed individually when justified based on the specificities of the sector. In considering how information regarding origin can be provided, the different policy options enumerated below will be assessed including their impacts on the single market and considering the EU's international commitments. The different options below are based on the geographical levels as already applicable to certain foods/primary food ingredients in existing EU rules".

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