



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-363/18
Organisation juive européenne, Vignoble Psagot Ltd v Ministre de
l'Economie et des Finances

Advocate General Hogan: EU law requires, for a product originating in a territory occupied by Israel since 1967, the indication of the geographical name of this territory and, where it is the case, the indication that the product comes from an Israeli settlement

On 24th November 2016, referring to the Regulation on the provision of food information to consumers¹ (the Regulation), the French Minister for the Economy and Finance published a notice to economic operators concerning the indication of origin of goods originating in the territories occupied by Israel since 1967. The notice specified that “Foodstuffs from the territories occupied by Israel must (therefore) be labelled to reflect this origin” and required products having such an origin to include the term “Israeli settlement” or equivalent terms.

By two applications, the Organisation juive européenne and Psagot (a company specialising in the exploitation of vineyards located in particular in the territories occupied by Israel) sought the annulment of the disputed notice before the Conseil d'État (Council of State, France)

The Conseil d'État considers that the compatibility of the French notice with EU law depends on whether the latter requires, for a product originating in a territory occupied by Israel since 1967, an indication of that territory and an indication that the product comes from an Israeli settlement if that is the case, or, if not, whether the provisions of the Regulation allow a Member State to require such products to carry such labels. It has therefore referred the matter to the Court of Justice.

In today's Opinion, Advocate General Gerard Hogan first examines the meaning of the terms ‘country of origin’ and ‘place of provenance’ in the light of the Regulation. The Advocate General finds that while ‘country of origin’ clearly refers to the names of the countries and their territorial sea, according to the Regulation the ‘place of provenance’ of a foodstuff is determined by means of words which are not necessarily limited to the name of the geographical area concerned, especially, where the use of geographic indicator alone might be apt to mislead.

In the light of these definitions, the Advocate General asks whether the absence of the indication of the origin or place of provenance of a foodstuff originating in a territory occupied by Israel could mislead the consumer. In this respect the Advocate General considers the criteria listed in the Regulation which are likely to influence the consumers' choice, namely, health, economic, environmental, social and ethical considerations. The Advocate General notes that the average consumer is one who is reasonably well informed, and reasonably observant and circumspect, as to the origin, provenance and quality associated with the foodstuff and argues that it cannot be excluded that the situation of a territory occupied by an occupying power — even more so when territorial occupation is accompanied by settlements — is a factor that may be important to the choice of a reasonably well informed, and reasonably observant and circumspect consumer, in a context where, in accordance with the Regulation, differences in the consumers' perceptions and their information needs must be taken into account, including ethical considerations.

¹ 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. (OJ 2011 L 304, p. 18, and corrigendum OJ 2016 L 266, p. 7.)

In the view of the Advocate General, the reference to 'ethical considerations' in the context of country of origin labelling is plainly a reference to those wider ethical considerations which may inform the thinking of certain consumers prior to purchase. Just as many European consumers objected to the purchase of South African goods in the pre-1994 apartheid era, present day consumers may object, on similar grounds, to the purchase of goods from a particular country because, for example, it is not a democracy or because it pursues particular political or social policies which that consumer happens to find objectionable or even repugnant.

The Advocate General notes therefore that, in the context of the Israeli policies vis-à-vis the Occupied Territories and the settlements, there may be some consumers who object to the purchase of products emanating from the territories. He adds that it is rather sufficient to say that a violation of international law constitutes the kind of ethical consideration which the EU legislature acknowledged as legitimate in the context of requiring country of origin information.

In this respect, Advocate General Hogan refers to several international instruments² before finding that the Israeli settlement policy is regarded as a manifest breach of international law, in particular on the basis of the right of peoples to self-determination. He adds that the Court has itself already recognised in the *Brita*³ judgment the need to make a clear distinction between products originating in the territory of Israel and those originating in the West Bank.

In these circumstances the Advocate General remarks that it is hardly surprising that some consumers may regard this manifest breach of international law as an ethical consideration that influences their consumer preferences and in respect of which they may require further information. He therefore concludes **that the absence of the indication of the country of origin or place of provenance of a product originating in a territory occupied by Israel and, in any event, a settlement colony, might mislead the consumer as to the true country of origin or place of provenance of the food.**

The Advocate General goes on to note, with regards to the extent of the obligation to indicate the origin of a food originating in a territory occupied by Israel since 1967, that the Regulation requires that the consumer have correct, neutral and objective information that does not mislead him. Among the factors to be taken into account in order to assess whether the labelling at issue in the main proceedings may be misleading, Israeli occupation and settlements could be 'an objective factor which might affect the expectations of the reasonable consumer'. In this light, the Advocate General considers that the addition of the terms 'Israeli settlements' to the geographical identification of the origin of the products is the only way to provide correct and objective but also accurate, clear and easily understandable information for the consumer.

Therefore, the Advocate General concludes that the Court should rule that **EU law requires for a product originating in a territory occupied by Israel since 1967, the indication of the geographical name of this territory and the indication that the product comes from an Israeli settlement if that is the case.**

The Advocate General then looks at the second, alternative question at hand, namely, whether EU Law allows Member States to introduce national measures with additional mandatory particulars, such as whether a Member State may itself require indication of the territory of a product originating in a territory occupied by Israel since 1967 and, in addition, that this product comes from an Israeli settlement if that is the case.

In this context, Advocate General Hogan refers to the Regulation which stipulates that national measures concerning the mandatory indication of the country of origin or place of provenance of foodstuffs are only authorised where there is 'a proven link between certain qualities of the food and its origin or provenance', and finds that in under this particular provision of the Regulation it is not sufficient that the country of origin or place of provenance has, as such, a certain importance in

² Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 136 (paragraph 120).

³ Case [C-386/08](#) Brita v Hauptzollamt Hamburg-Hafen, see also Press Release No [14/10](#)

the consumers' decision. On the contrary, so far as this particular provision is concerned, the country of origin or the place of provenance must have a tangible impact in respect of the product itself and, in particular, the quality of the food in question.

The Advocate General notes that the fact that a territory is occupied by an occupying power or that a particular foodstuff is produced by a person living in a settlement is not likely to give or modify certain qualities of the foodstuff in relation to its origin or provenance, at least so far as the food products originating in the Occupied Territories are concerned.

Therefore, in the event that the Court does not accept his analysis on this first question, Advocate General Hogan proposes that the Court should rule **that Member States may not require for the purpose of the Regulation the indication of the territory of a product originating in a territory occupied by Israel since 1967, nor that such product comes from an Israeli settlement.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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