

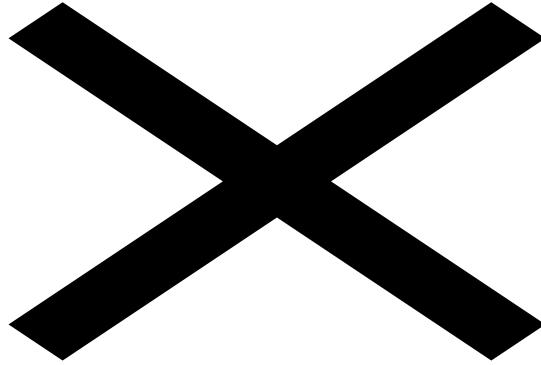
# DIRITTI COMPARATI

Comparare i diritti fondamentali in Europa

## **HORSEMEAT SCANDAL TURNS INTO A FOOD SAFETY CRISIS**

*Posted on 7 Marzo 2013 by [Alberto Alemanno](#)*

Although the current horsemeat scandal has been depicted as an instance of fraud and mislabeling generated by a single source, it is progressively escalating into a broader food safety crisis that reveals some flaws in our EU food safety system. Yet relying on country-of-origin-labelling – as many have invoked it – to tackle misleading labeling of food ingredients might be the wrong answer to the good question raised by this unfortunate story.



Let's start from the facts before providing an analysis enabling us to identify the flaws of the current EU regulatory framework and providing some recommendations.

### **Timeline**

In January 2013, official controls led by the [Food Safety Authority of Ireland](#) revealed fraud in the marketing of foods: certain burgers contained traces of horsemeat not declared in the list of ingredients and their name referred solely to the presence of beef. After some hesitation about the source of the fraudulent contamination, it appeared that the mislabeled products came from the Irish supplier [Silvercrest Foods](#), who – in the aftermath of the investigation – saw its supply contract immediately terminated by inter alia [Burger King](#). Several millions of burgers have been voluntarily recalled by several retailers who received the meat from this Irish processor in Ireland, UK as well as elsewhere.

As the Irish horsemeat scandal erupted, authorities in other countries, such as the [UK](#), [France](#), [Spain](#), [Germany](#), [Denmark](#), [Sweden](#) and [Norway](#) began investigating the composition of several meat products sold within their jurisdictions. The more the authorities looked for horsemeat in beef-labeled products, the more horsemeat they found. The scale of horsemeat traces ranges from hamburgers containing 29 percent horse, which were

found on sale in Tesco, to the now infamous Findus beef lasagna, which contained no beef at all. As of today, 28 firms in 13 countries seem to have been at the origin of some of the alleged misleading labeling practices.

The horsemeat that has been found so far entered the abovementioned countries from several sources. There's Comigel, a French exporter of frozen meals with a factory in Luxembourg that made products for Findus, Tesco, and Aldi in the U.K., as well as retailers and caterers in other countries. Then there's [ABP Food Group](#), an Irish company whose subsidiaries include the Silvercrest production plant in the Republic of Ireland and a sister firm, Dalepak, based in Yorkshire, England, both of which supplied British supermarkets with frozen burgers.

Behind these manufacturing companies lie networks of suppliers such as [Spanghero](#), a French firm that supplied Comigel with meat it had bought from Romanian slaughterhouses via traders in Cyprus and the Netherlands. Meat reached Silvercrest via the Irish broker McAdam Foods, which filled orders from a Danish-owned importer called Flexi Foods, based in the northern English town of Hull. And upstream of those operators? Abattoirs and meat processing plants based all over Europe, from England and France to Poland and Romania.

The most mediatized story is by far the Findus Beef Lasagna whose peripatetic journey is portrayed below:



### **From a food misleading scandal to a food safety crisis**

Despite being depicted as another food scandal, the horsemeat story does not emerge as a classic contamination crisis. A closer look reveals instead a broader, generalised misleading practice that, as everybody knew about it and nobody denounced it, could escape our supposedly strict food regulatory regime.

Both the food safety authorities and private business operators involved have (too) quick dismissed the ongoing crisis as an isolated instance of contamination of beef products with horsemeat in the EU food chain. As EFSA rhetorically [stated](#) *ad nauseam*, echoed by several food multinationals, "There is no evidence to date of a food safety concern." In the absence of a food safety concern, not only Member State cannot

legally ban the import on its territory of a given product (thus safeguarding the sanctity of the EU internal market), but also the EU does not enjoy the competence to step in.

Although under EU rules it is illegal to label a product as beef if another type of meat is present (see [Directive 2000/13](#) as well as Regulation 178/2002), it is for the Member States (and not the EU) to enforce such a prohibition.

Therefore, by relegating the ongoing scandal into a mere, isolated and one-sourced fraud 'raising issues of false labeling, food quality and traceability in the EU food chain', the EU limited itself – at least until last Friday – to launch, under the supervision of [EUROPOL](#), a EU-wide fraud investigation.

However, as the controls intensified (*rectius*, when they eventually took place), these revealed the emerging concern about the possibility that – as a result of the fraudulent contamination – the veterinary painkiller [phenylbutazone](#) (whose use in bred-horses is prohibited) could have entered the EU food chain.

These events, by turning a consumer protection issue into a food safety crisis, prompted the EU Commission to hold an [extraordinary Standing Committee of the Food Chain and Animal Health](#) (SCoFAH), in which the Member States representatives endorsed the coordinated plan announced by Health & Consumer Policy Commissioner Tonio Borg already on Wednesday 13th February.

This plan, which will be co-financed by the European Commission, is ongoing and will last for one month and may be extended for another two months. It foresees three actions:

**Establishment of the presence of unlabeled horse meat in foods:** The plan, foresees controls, mainly at retail level, of foods destined for the final consumer and marketed as containing beef to detect the presence of unlabeled horse meat (indicative total number of 2250 samples across the Union ranging from 10 to 150 per Member State).

**Detection of possible residues of phenylbutazone in horsemeat:** the plan foresees testing of 1 sample for every 50 tons of horsemeat. A Member State will carry out a minimum of 5 tests.

The plan also provides for **regular reporting of the results of the controls to the Commission**, such as information on sampling, type of analysis and follow-up controls. For positive findings related to horsemeat, the country where the animals concerned were certified for slaughter will also be reported.

All these information will be included in the [Rapid Alert System for Food and Feed \(RASFF\)](#) so that Member States' authorities can immediately use them.

### **Litigation**

In the meantime, a [blame game](#) has begun among the multifarious entities involved in the complex food supply chain in order to identify who was the most upstream supplier who was aware that its products were not compliant with food labeling rules. Thus, for instance, all entities that have been involved in the preparation of the Findus lasagna before Spanghero allege to have been compliant with food labeling rules by clearly displaying on the products 'horsemeat'. However, it also appears from the ongoing investigation taking place in the Netherlands that the relevant products already contained by that time some mix of beef and meat products. Did the Dutch trader 'mislead to a significant degree, particular as to the characteristics of the foodstuff, and in particular as to its nature, identity and properties, composition, quantity, durability, origin or provenance, method of manufacture or production' ? (see Article of Regulation 2000/13). Under the new responsibilities rules enshrined in Article 8 of the Regulation on Food Information to Consumers the new standard to determine the responsibility is the fact of 'knowing or presuming, on the basis of the information in possession, to be non-compliant with the applicable food information law'. These rules, which in essence reinforce the previous liability regime, by also laying down specific rules applicable B2B, are set to enter into force only on December 13, 2014.

### **Lessons learned**

Amid the public outcry about the ongoing horsemeat scandal(s), the discovery of unlabeled traces of meat in beef products has already prompted a demand for the introduction of further regulatory

requirements governing the marketing and labeling of food products. In particular, [several MEPs](#), [consumer organizations](#), [commentators](#) and the [EU Commissioner](#) seem to look into mandatory country of origin labeling (COOL) as a panacea capable to prevent this sort of food misleading practices. Yet before rushing to the first fancy policy options available, one has to holistically consider which would be the benefits stemming from an extension of COOL to more food products measured against costs it would generate.

Mandatory origin provisions have been developed for many food products, such as honey, fruit and vegetables, fish, olive oil, and – following the bovine spongiform encephalopathy (BSE) crisis – also [apply](#), since 2000, to all beef and beef products. Yet no country of origin labeling is required for meat used as an ingredient. Will an extension of COOL to meat used as ingredient – as currently envisaged by Article 26(6) of the new [Regulation on Food Information to Consumers](#) – be capable per se to prevent a new horsemeat scandal from happening again? In other words, to what extent imposing on the different actors involved in the food supply chain to display on their products the origin of the meat ingredient they use will avoid the mislabeling of the final product?

The EU Commission is currently performing an impact assessment to address these questions, by taking into account 'the need for the consumer to be informed, the feasibility of providing the mandatory indication of the country of origin and an analysis of the costs and benefits of the introduction of such measures, including the legal impact on the internal market and the impact on international trade' (see [Article 26\(6\)](#) of the new Regulation on Food Information to Consumers).

Yet, in my humble opinion, it won't be the imposition of an additional requirement about the indication of the origin of a meat ingredient of a product that will avoid the misleading character of a labeling indication. As illustrated by the current horsemeat scandal(s), the source of misleading labeling does not stem from the lack of indication of the origin of a product, but rather by the deliberate presentation of a product as different of what actually it contains. In other words, it is not the origin of a product but the nature of that product that should be known. This is the

job of the traceability requirement, enabling authorities as well as companies to trace back – even in the case of long and complex food supply chain – the journey made by a food and/or a food ingredient. Traceability requirements seem to have served, in the present circumstances, their declared purpose by enabling the various national authorities to quickly identify the various sources of contamination. Yet no regulatory requirement besides more effective food controls will be able to prevent misleading practices.

### **Conclusion**

Unfortunately, the public outcry generated by the ongoing horsemeat scandal is likely to render emotional the prospective assessment that is currently performed by the EU Commission upon the feasibility and opportunity of extending COOL to meat used as ingredient (and other primary ingredients). Once more policymakers will sell EU consumers the illusion of addressing their concern while they will instead rely on the first available policy option that promises a quick fix. Creating rules is definitely easier, yet more expensive, than making sure that they are abide by.