

## Food Law in the Context of Agricultural Law

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### Abstract

Agricultural and food law are cross-lying fields of safety laws, penetrated by private and public law, and by European and international law. They show common mixed regulatory concepts, including political, economic and science-based ones. The three pillars of the concept of subject-oriented regulation are consumers, business operators and authorities in a multilevel interaction. There is the same priority of protecting interests by favouring consumers and over business operators. There are naturally interconnections between the two fields of law, first of all to mention is the lifeblood foodstuffs-producing character of agriculture. Protecting the interests of consumers and the concept of food safety connects the two fields of law. The concept of 'from soil to table' agri-regulation model directly influences both environmental and food safety and the biological and chemical safety of agriculture. The harmonisation and integration of laws has taken place in different and in the opposite directions. The basic principles of food law are penetrating the conceptual model of agricultural law.

Keywords: mutual interdependence, product safety, large amount of rules, opposite way of Europeanization, safety of consumer and production, precaution, agri-food law, agri-environmental preconditions, passing through safety law

### Introduction

In the last fifty years the subject matter of agricultural and food law has substantially changed in Europe. First of all to mention is the appearance of an international and European regulatory framework, beyond the traditional national agrarian and food laws.

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\* Mihály Kurucz (PhD) is professor at Eötvös Loránd University, Budapest, Department of Agricultural Law (e-mail: kurucz@ajk.elte.hu).

For more than twenty years we can characterise the agricultural and food law as being modified by a cumulative process of ‘internationalisation and Europeanisation’.<sup>1</sup>

International agricultural and food law clearly has a contractual character,<sup>2</sup> but European agricultural and food law has an institutionalised and autonomous character. Nowadays, both of them are to be considered as *sui generis* fields of law,<sup>3</sup> aiming at primacy over member state’s law,<sup>4</sup> and with exclusionary or subsidiary competence of its own.

European agricultural law is focusing not only to the products and production processes and marketing business,<sup>5</sup> but it also comprises the preservation of its natural environment, and protection of plant, animal and consumer safety.

The requirements of soil, water, plant and animal protection and animal welfare have become decisive factors both in agricultural and in food law, being built into the new regulatory model of foodchain security.<sup>6</sup>

As a result of successive reforms of agricultural and food law at European level, the two branches of law seem to be approaching to each other in many ways as regards the subject matter of regulation.

Nevertheless, there are eye-catching differences concerning the subject, content and manner of regulating the two fields of law at European level.

The vigorous unification of law under common market regulation has been perceptible in European agricultural law from the beginning of common agricultural policy of EEC. In this regard, the Europeanisation of food law seems to be progressing a little slower, but nowadays stronger, than in agriculture.

From the beginning of CAP until its reforms of 2007, the direct unification of agricultural law has been narrowed to regulating the agricultural products and products made from them. Other areas, such as the agri-food, and agri-environmental law, consumer, animal and plant protection law have remained areas for the approximation of national laws.

Internal market regulation for agricultural products was introduced in 1962, through the CAP. The CAP enabled the development of the most integrated and unified law in the single agrimarket. Since entering into force, the Single European Act has substantially

<sup>1</sup> See Alois Leidwen, ‘Die Internationalisierung des Agrarrechts’ in Gottfried Holzer (ed), *Agrarrecht im Lichte des öffentlichen Rechts. Festschrift für Univ.-Prof. Dr. Gottfried Holzer zum 60. Geburtstag* (Neuer Wissenschaftlichen Verlag 2007, Wien–Graz) 33–49.

<sup>2</sup> See the The Agreements under WTO on agricultural and food products annexed to the Marrakesh Agreement. See more Globalgap management system for farm produce <[https://www.globalgap.org/uk\\_en/for-producers/globalg.a.p./](https://www.globalgap.org/uk_en/for-producers/globalg.a.p./)> accessed 5 October 2021.

<sup>3</sup> Wojcech Sadurski, *Rights Before Courts: A Study of Constitutional Courts in Central-Eastern Europe* (Springer 2005, Dordrecht) 146; Vörös Imre, ‘Európai jog – magyar jog: konkurencia vagy koegzisztencia?’ (2011) (7–8) *Jogtudományi Közlöny*, 396–399.

<sup>4</sup> Jan Klabbers, *An Introduction to International Institutional Law* (Cambridge University Press 2002, Cambridge) 61–63.

<sup>5</sup> The so-called negative integration.

<sup>6</sup> The principle of ‘from soil to table’.

changed the content of the regulation of national and European agricultural law, a number of new areas have appeared at European level, such as harmonised laws on foodstuffs, feedstuffs, veterinary issues, plant protection, the protection of seeds and use of fertilisers, not to mention environment-related agricultural law.

Since 2002, through the introduction of General European Food Law (henceforth: GFL), has been created a strong process of unification of food and feed law in EU, rather than simple approximation of national food laws.

In this study, I focus on the appearance and partial integration of food law into agricultural law and the the parallel, but adverse procession of unified european regulations into both fields of law.

## **I The Specific Characteristics of Food and Agricultural Law (Agri-food Law)**

Looking at the material of agricultural and food law, we have at once to appreciate the infinitely large number of rules. As a consequence, it sometimes seems impossible to put all the provisions into a well-ordered structure.<sup>7</sup> In the absence of basic principles and such a structure, it is impossible to understand the law. The systematisation of food and agricultural law means structuring its material regulation (aims, principles, rules and their explanation etc.) into a comprehensive model. This is the precondition for understanding and exploring the two fields of law.<sup>8</sup>

If we consider food and agricultural law in the context of the different classic branch of laws, both of them seem to be structured as cross-lying, or doubled interlaying fields of law, penetrated by private and public law, and by European and international law at the same time.

There are authors, who are convinced of the private law origin of food and agricultural law, penetrated with public law institutions. Others interpret them as part of public law, with private law institutions emerging from it.

Common regulatory concepts, including political, economic, and science-based ones, appear in the regulation of the food and agricultural sector. The mixed, sometimes integrated interpretation approach of food policy appears naturally in the regulatory manner as well.

In the science-based approach, we can conclude that food and agricultural law are functional areas of law; they are researched and taught academic disciplines in their own right. This interpretation is based on their social phenomena and dogmatic distinction.

<sup>7</sup> The quantity of national and European food and agricultural laws makes it one of the most heavily regulated sectors in the EU. Both fields of law seem to be up to now an annoyingly fragile legal branch.

<sup>8</sup> Observing the manner of provisions on the basis of what and how to regulate, and who is addressed in regulation. See Bernd M. J. van der Meulen, 'The Structure of European Food Law' (2009) 14 (2) *Deakin Law Review*, 305–339.

According to the material of the food and agricultural legislation, we can group the legislative acts into five categories:

- legislation on production in the internal market,
- legislation on the process and marketing of products,
- legislation on the different items of protection of and subsidies of producers,
- legislation on the protection of consumers.

Agricultural law focuses on

- subsidies to agricultural producers as entrepreneurs,
- protection of consumers,
- animal and plant protection,
- ruling on the competence of European and member state authorities,
- the protection and preservation of the natural and social environment.

EU food law focuses on

- the protection of consumers,
- legislation on the processing and marketing of food products,
- legislation on the process and marketing of additives and technological excipients in foods,
- legislation on food safety: traceability of certain elements of producing foods,
- responsibility of entrepreneurs, and
- ruling on the tasks and competence of authorities.

Both the agricultural and food law legislation have common central essential sorting basic rules (pillars of activity and legislation), emerging from the general contractual rules of all Treaties of the Community.

First, we can refer to the autonomous latitude of the producer, as an entrepreneur. The producer as a business operator is free to produce, process and trade agricultural and food products, under the obligation of preventive and precautionary behaviour. The first margin of free latitude is the general prohibition of abusive behaviour, so long as no certain requirement of law to be applied.<sup>9</sup>

The second pillar is the prohibition of producing or bringing into the common internal market unsafe or potentially risky products.<sup>10</sup>

The third basic pillar is, if prior authorisation is to be obtained to produce or to bring the products (food etc.) to the market, the activity is prohibited before getting permission and if is withdrawn or elapses.

The fourth basic maxim is to provide full disclosure to intermediate producers and consumers on the attributes of its products produced (traceability).

The fifth and new maxim is the environmental and social sustainability of production. Both fields of law are penetrated by the requirements of different sectors of safety law, first of all by the chemical, biological and genetic safety.

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<sup>9</sup> Article 17, Section 1 of GFL.

<sup>10</sup> Article 14 of GFL.

At the same time, food and agricultural law differ from each other in addressing the basic subject groups and regulating the subject matter. However, there are similarities in their cardinal approach to regulating the food chain, in particular in product related regulation and in the protection of consumers and the environment. The protection of consumers covers all the elements of the food chain, to maintain:

- life,
  - health,
  - the right to be informed of relevant information concerning the content, quality and quantity, as well as any potential danger of the foodstuff,
  - other interests,
- of consumers.

There are particularities in the two branch of law, but the two areas of law simultaneously protect consumers' interests, in every stage of the food chain, from the soil to the consumer's table. The CAP regime, due to the prescription of the TFEU, serve the vital interests of protection of consumers through compliance measures.

Both agricultural and food law now focus primarily on the protection of consumers, but they do not pass the direct protection of food producers' income stability over. Horizontal, non-product-related regulation, and the free trade in food commodities, subordinated to public safety, has been maintained.

## **II Mutual Interdependence of Agricultural and Food Law through the Safety of Consumers and Production Concerning Foodstuffs and Production Process**

There are naturally interconnections between the two fields of law; the first to mention is the character of agriculture as producing the essentials for human and animal life and health.

Protecting the interests of the consumer and the concept of food safety connect the two fields of law. The concept of food includes unprocessed raw materials containing the minerals, vitamins and nutriment necessary for the life of individuals.<sup>11</sup> Agricultural production provides the food supply in a quantitative and qualitative sense.<sup>12</sup> Different institutions guarantee the security of food supply and different systems of rules guarantee the safety of food products. Agriculture must work under a coherent demand-oriented food mission, to provide a wide choice of foods at reasonable prices to consumers.

<sup>11</sup> The concept of food regulated by general food regulation of European Parliament and Council from 2002.

<sup>12</sup> In practice, EU agriculture should guarantee the security of food supply and safety of food products for over 500 million European citizens.

Food security and food safety are among the most important tasks of agricultural production.<sup>13</sup> National governments and regional and global institutions have a role in maintaining such a policy of agriculture and food production.

### III Indirect Regulation of the Security of Food Quality through Agri-environmental Law

The problems of climate change, the degradation of biodiversity, deterioration of the soil and arable lands, influence of plant-protecting chemicals and the appearance of genetically modified organisms in the environment are endangering the security of food supply at a worldwide level. The technologies of large-scale and standardised food production are the key economic factors influencing the quantity and quality of food supply. As a response to these factors agricultural law has been modified at European level, involving the regulation of protecting environmental, human, animal and plant health in the course of production.

The environmental protection requirements are more and more integrated into agricultural law.<sup>14</sup> The integrated model of 'sustainable agriculture' is low-input farming systems producing healthy food, while preserving the natural ecosystem and ignoring genetically modified or engineered agriproducts and foods to preserve biological security.<sup>15</sup>

The theoretical basis of agri-environmental law<sup>16</sup> is based on the concept of ecological sustainable development, which implies meeting the needs of the present without compromising the ability of future generations to meet their own needs, should become a central guiding principle of the United Nations, governments and private institutions, organizations and enterprises.<sup>17</sup>

Agricultural production is to be harmonised with the sustainable form of development, when agricultural exploitation has served the human right to a healthy environment<sup>18</sup> and

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<sup>13</sup> One of the greatest problem of the 21st century is that 794.6 million people suffer from gnawing pains of hunger, while the number suffering from illnesses is radically increasing (e.g. diabetes, sickly sensitivity to gluten as well as to lactose and other food intolerances and allergies). The State of Food Insecurity in the World. FAO, Rome, 2015. <<http://www.fao.org/3/i4646e/i4646e.pdf>> accessed 5 October 2021.

<sup>14</sup> See Article 3 of the Treaty Establishing the European Community, listing its goals.

<sup>15</sup> Sustainable agriculture and rural development, Report of the Secretary-General Economic and Social Council, Commission on Sustainable Development, Eighth session, E/CN.17/2000/7, point 35 and 57.

<sup>16</sup> The 'integration principle' of environmental law is the connecting link between sustainability and agri-environmental efforts.

<sup>17</sup> General Assembly Resolution 42/187, 11 December 1987.

<sup>18</sup> See Principle 1 of the Stockholm Declaration of the United Nations Conference on the Human Environment. Stockholm Declaration, part II (Principles), Principle 1.

to the right to healthy food.<sup>19</sup> A clean environment provides the integration of environment and agricultural production in every part of food chain.<sup>20</sup>

## **IV Parallel but Different Ways of Regulation for the Harmonisation of Agricultural and Food Law**

In the agricultural and food law from the beginning of EEC can be seen in the policy making and in regulation the parallel, but different approximation of national laws, acting in opposite way. During the first years of the EEC, the legislature developed the common agricultural policy (CAP) and the first single internal market for agricultural products. The main motivation, setting out the aims in Article 39 of the Treaty of EEC, was the desire to gain self-sufficiency in food supply and income stability of producers. Foods derived from agricultural products fell within the concept of agricultural product and were directly subject to the CAP. In this way, this section of the entire food chain became under common market organisation.

### **1 Dual Method of Harmonisation with Regard to Agri-food Products**

From the beginning of EEC up to now, there has a strong legal basis for the integrated regulation of the common market for producing and marketing agricultural and food products by the CAP, based on the relevant rules of the Treaty of Rome.

Nevertheless, there is a mixed territory between the two subjects of law, namely among the so-called agri-food products, as feed- and foodstuffs produced directly for animal and human consumption. In this mixed field of law, the rules of common agricultural law are penetrated by food law. Agricultural law contains the regulatory scheme based upon the CAP regulation of Treaty of EEC, namely through the common market-organisation regulation. The products concerned are primarily agricultural products, produced directly for human consumption, and are considered as foods up to the first degree of processing, but originating directly from agricultural production, such as fruits and vegetable, eggs, milk and dairy products, rice, butter and powdered milk and grain.

In this regulation, the agricultural and food law were harmonised in parallel, but in different ways, under either Art 43 EEC or Art. 100 EEC. The two forms of the legal basis for the harmonisation of law were of a different character. The content of harmonisation according to Art 100 EEC was considered an approximation of law, while in the agricultural fields under

<sup>19</sup> The right to food as a fundamental right, as precondition of biological existence, bears the characteristics of the human rights of third generation, appeared the 20th century. See 'The Right to the Adequate Food' (2014) 2 (4) *Acta Humana: Communications on Human Rights*, 55–64.

<sup>20</sup> Report of the Expert Group Meeting on Identification of Principles of International Law for Sustainable Development, Geneva, Switzerland, 26–28 September 1995, paragraph 31.

Art. 43 EEC was as a unification of law. Both of them primarily covered product-related quality requirements, safety, health protection and the consumer of agricultural produce.

## 2 Direct Harmonisation in Food Law

In the first years of the EEC, the EC's legislation regarded foodstuffs as simple commodities in the market.<sup>21</sup> From the early 1960s until the mid-1990s, European food law was principally directed by the basic rules of the internal market for goods. Only the wine law is to be considered an exception, as it was covered by the Council Regulation of 1962.<sup>22</sup> There were three different phases in the approximation of national laws.

In the first years, Community legislation aimed primarily at facilitating the internal market through the harmonisation of national product standards.<sup>23</sup> Early attempts to establish a common market for food products was the market-oriented phase when, in connection with the exceptions of protecting the health and life of humans, animals or plants, the free movement of goods, became the vital element of food law. This market-oriented phase could be divided into two stages.

The first was the harmonisation of national product standards through vertical directives.<sup>24</sup> The directives were issued on the composition of certain specific food products, such as recipe, compositional or technical standards legislation. The prescription for product compositions faced two substantial obstacles. The first was the rule of procedure; all legislation required unanimity in the Council, which gave each Member State a virtual right of veto over new legislation. The second was the impossibility of dealing with all foodstuffs.<sup>25</sup> The so-called Dijon and Sandoz decisions transformed market-oriented food law into mutual recognition<sup>26</sup> oriented food law, without compromising consumer protection. The principle of mutual recognition has resulted in product quality standards based on the lowest common denominator in the Community: the prohibition of quantitative restrictions on imports and all measures having equivalent effect,<sup>27</sup> but without implying consumer protection.<sup>28</sup> One

<sup>21</sup> The first legislative Acts was initiated by the Directorate General responsible for agriculture, but eventually by the DGs responsible for industry, enterprises and the internal market.

<sup>22</sup> See the regulation of Council, 4 April 1962, Nr. 24/1962.

<sup>23</sup> The vertical type of regulation has not disappeared in food law. The basic rule, the Codex Alimentarius until now regulates certain foods in a product-specific manner.

<sup>24</sup> Direct integration of food commerce and production through European Recipe Principle.

<sup>25</sup> Nevertheless, a few products have remained subject to European rules on compositional standards, as a part of legacy of the first phase of EU food law. They are being updated or replaced when necessary. (For example, the definition of gin, rum, whisky, the content of fruit juices etc.).

<sup>26</sup> The most relevant European courts cases were the following judgement: C-120/79 (*Cassis de Dijon*), C-174/82 (*Sandoz*) and C-176/84 (*Beer*).

<sup>27</sup> Now to be read in Article 34 of the Treaty on the Functioning of the European Union (TFEU).

<sup>28</sup> This will be shown later on in this article. In the meantime, the protection of consumer safety has been concentrated at EU level.



outcome of this decision has significantly changed the content of harmonisation: it had to serve to alleviate the consequences of the system of mutual recognition.<sup>29</sup>

The second stage of harmonisation<sup>30</sup> was the conversion from product-specific legislation to horizontal legislation for additive substances and excipient materials. In 1969,<sup>31</sup> the Council adopted the programme to eliminate technical barriers to trade in foodstuffs. The Council regulation described 50 areas of food law for approximation by December 1970.

An important part of horizontal harmonisation was the regulation of a positive list of accepted additives and excipient materials having contact with foodstuffs, to avoid any contamination of them.<sup>32</sup> The additives could have been used due to previous official approval if they corresponded to a reasonable technological need and presented no hazard to the health of the consumer. The legislation setting limits on the presence of undesirable substances (contaminants, toxins, residues of pesticides or veterinary drugs) or organisms in food were set on the basis of scientific risk assessment

## V The Integrated European Food Law as an Autonomous Body of Law

The beginning of third phase is the formation of sui generis EU food law does not seem to be conceptualized in advance. It seems to be as an urgent response and reaction to major food scandals<sup>33</sup> ‘developing’ in the European food market. The social effects of great food scandals have led to a new approach in the regulatory system: preserving the internal food market but subordinated to European food safety law. In May 1997, the European Commission published its Green Paper on the general principles of food law in the EU and sketched the outlines of a new legal system giving consumer protection as the main priority, with strengthened food safety control.

The White Paper on Food Safety was published in January 2000, focusing on high levels of food safety in European food law. There was an Annex to the White Paper, the Action Plan on Food Safety, with a list of 84 legislative steps, submitted by the Commission to create a regulatory framework for ensuring a high level of protection of consumers and public health.<sup>34</sup> The new regulatory framework of food law has resulted in regulations taking the lead role in unifying of European food law instead of approximative directives, although the horizontal

<sup>29</sup> See the ‘Communication on the free movement of foodstuffs within Community’ published by the Commission in 1989 (OJ No 271. of 24 January 1989).

<sup>30</sup> The German translation of Article 100 of the Treaty of Rome refers to *Angleichung*; the English text uses the word Approximation. There are differing definitions of these words.

<sup>31</sup> OJ No C 76. 17 June 1969.

<sup>32</sup> Now are the Regulation 1935/2004 Food contact materials; Allergen labelling requirements included in Directive 2000/13 and Regulation 1924/2006 Nutrition and health claims.

<sup>33</sup> Subsequent food safety scares, outbreaks of animal diseases, such as BSE epidemic and scandals over fraudulent practices led to taking urgent protective measures.

<sup>34</sup> Most of the 84 steps were taken.

form of harmonisation has survived the reforms of food law, and is still an important part of its regulation.<sup>35</sup>

Having passed the food scandals of the final decades of the last century, Regulation 178/2002 of the European Parliament and of the Council, defining the regulatory scope of GFL, was published. The new law introduced a new holistic approach in interpreting food safety, as integrated safety law with basic maxim of laws: ‘food security embraces every stage of the food chain, including protection of the primary sector of food production such as soil, water, plants, feed for food producing animals: “from farm to fork”’. This integrated body of GFL should apply directly in the European Union and its Member States.<sup>36</sup> It establishes the common basis for food law in Member States and includes common definitions, general provisions and specific requirements and, lays down the procedures in matters of food safety. The GFL is essentially based on centralised regulatory power and ruled by regulations rather than directives.<sup>37</sup>

The Regulation of of GFL has become the foundation of the new European food and feed law. It sets out an overarching and coherent framework for the development of food and feed legislation, both at Union and national level. The GFL expresses the objectives of EU food law in Article 5. Food law shall pursue one or more of the general objectives of

- a high level of protection of human life and health and<sup>38</sup>
- the protection of consumers’ interests, including fair practices in food trade, taking account of, where appropriate,
- the protection of animal health<sup>39</sup> and welfare, and
- the protection of plant health.<sup>40</sup>

<sup>35</sup> Article 3(2) (a) Regulation 1333/2008 on food additives. Note that this concept of food additives is much less wide than the one applied in the USA. See Federal Food, Drug and Cosmetics Act § 201 (21 USC § 321).

<sup>36</sup> Consolidated Version of Regulation (EC) No 178/2002, implemented by Commission Regulation (EC) No 2230/2004 (OJ L 379, p64, 24/12/2004) of 23 December 2004 and Commission Implementing Regulation (EU) No 931/2011 (OJ L 242, p2, 20/09/2011) of 19 September 2011. The Commission has published a Guidance Document on the Implementation of Articles 11, 12, 16, 17, 18, 19 and 20 of Regulation EC/178/2002 on General Food Law. The document aims to assist all players in the food chain to better understand the requirements of the Regulation and to apply it correctly and in a uniform way.

<sup>37</sup> There are very important fields of food law, retaining the indirectly horizontal control devices of integration, such as the directives for food-additives.

<sup>38</sup> Protection of consumers from unsanitary, unwholesome, mislabelled, or adulterated food.

<sup>39</sup> The first elements of EC regulation can be found in December 1992, when the Council abolished intra EC frontier controls. It followed the Directive 89/662 which aimed to ensure veterinary checks on the place of dispatch of animals. A number of measures were adopted to control and prevent various livestock diseases, such as brucellosis and tuberculosis in cattle and swine fever.

<sup>40</sup> Plant health control is part of the security of the food chain of primary importance. The protection system has to prevent the harmful organisms from getting into and spreading in animal feed and human food. The harmonisation of plant protection law is similar to veterinary control; it introduced the health-check system at the place of production and dispatch, before the product gets into the market. It covers protection from the introduction and spread of harmful organisms to plants too. Plant health standards were established within the EC through a framework directive, which extends to the regulation of a positive list for applicable plant

It is obvious that there are natural overlapping territories with agricultural law, in particular within the regulatory framework of food chain. We can see the similarity in product related regulation of food and agricultural law there are significant overlaps as to the scope of food law.

The GFL covers all sectors of the food chain, including important areas of agricultural law too:

- feed production,
- primary production,
- food processing, storage,
- transport, and
- retail sale.

## 1 European Food Law as Science-based Law

European food law seems to be based on an explicit science-based decision-making procedure. This prescription of risk analyses (composed of risk assessment, risk communication and risk management) eventually raises the science-grounded decision making mechanism to the eminence of a principle of food law. The European Food Safety Authority (EFSA) was established to ensure the science basis of risk analysis.<sup>41</sup> The science-oriented requirements extend to the content of labels; protecting human health should be based on risk analysis.<sup>42</sup> When risk assessment is inclusive in its procedure, but gives scientific reasons to suspect a food safety risk then public authorities are entitled to take protective measures.

## 2 European Food Law as Food Safety Law

The Regulation has laid down the general principles and requirements of food law.<sup>43</sup> The main objective of the GFL is to secure a high level of protection of public health and consumer interests with regard to food products. The concept of food is at the centre of the regulation. If the product in question meets the legal definition for food, the regulatory system of the GFL should apply to it.<sup>44</sup> The term food involves food and food ingredients, therefore both of them are subject to the GFL.

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protection substances and prescribes maximum levels of pesticide residues in different plants, cereals, fruits and vegetables and other foodstuffs of animal origin and feed.

<sup>41</sup> Article 6 of 2002 Regulation 178/2002 (General Food Law, abbreviated to GFL).

<sup>42</sup> Article 5 Section 3 of GFL '[w]here international standards exist or their completion is imminent, they shall be taken into consideration in the development or adaptation of food law, except where such standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives of food law or where there is a scientific justification, or where they would result in a different level of protection from the one determined as appropriate in the Community'.

<sup>43</sup> The conceptualisation of GFL emphasises the primacy of regulation by decree and at European level.

<sup>44</sup> The GFL defines the positive and negative terms of 'food' (Article 2 of GFL) as the subject matter of regulation. The general descriptive determination in certain cases is to be interpreted according to the product relevant definition of Codex Alimentarius. See the Article 7 of GFL.

The new food law does not exclude certain other interests, so the free movement of food and feed manufactured or marketed in the internal market is preserved, but it primarily focuses on the protection of consumers. The GFL Regulation declares that only safe food and feed can be placed on the Union market or serve as feed to food-producing animals. The Regulation establishes basic criteria for establishing whether a food or feed is safe or unsafe.<sup>45</sup>

GFL is essentially based on centralised regulatory power, and ruled by regulations, rather than directives.<sup>46</sup> Its regulatory model is based on three pillars:

- legislation on food products,
- legislation on the manufacture of food products, and
- legislation on the presentation and marketing of food products.

### 3 Passing Theoretical Model of European Food Law through to Agricultural Law

The theoretical model of establishing the basic principles of food law is derived from the hierarchy of the three main actors in the food market, the consumer, the food business operator<sup>47</sup> and authority. Food business operator means the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control.

First in the hierarchy is the consumer, followed by the of food-business entrepreneurs, and finally the tasks and competence of authorities in multilevel administration.

Corresponding to these basic pillars are built the principles of food legislation, as follows.

#### a) The precautionary principle

Consumers must have confidence and assurance that the food they buy will do them no harm or have an adverse effect. In the Commission's approach, the aim of precautionary principle is to establish Commission common guidelines for understanding of how to assess, appraise, manage and communicate the risks in the food production that science is not yet able to evaluate fully, and avoid unwarranted recourse. The safety of food is of critical importance.

The so-called precautionary principle has been implemented to prevent uncertainty and overwhelming risk from occurring in the food market.

The precautionary principle is an integral part of the decision-making process leading to the adoption of any measure for the protection of human health. Under the precautionary

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<sup>45</sup> Article 14 of Regulation (EC) No 178/002 sets out food safety requirements. It requires that food must not be placed on the market if it is unsafe.

<sup>46</sup> As an important exemption is to be mentioned the so-called horizontal rules of food additives.

<sup>47</sup> The European Commission has published a poster on the Key Obligations of a Food Business Operators. Regulation (EC) No 178/2002 defines food as any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans.

principle, the Commission or the Council may take protective measures without having to wait for the reality of risks and danger to be fully demonstrated.

The analysis of and support for best practice in the application of the precautionary principle in different areas of policy making and in the assessment, management and communication of uncertainty and risk.

### **b) Regulation on information by producers**

In the presentation of certain foods, entrepreneurs must provide suitable information to consumers regarding the attribution and quality of their product, through labelling and advertising.

Labelling implies 'any words, particulars, trade marks, brand name, pictorial matter or symbol relating to a food and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such food'.<sup>48</sup> Labelling and other food information may not be misleading.<sup>49</sup> The information to consumers must be labelled in a language that is easily understood all pre-packaged food products.

Specific labelling requirements demand that the presence of additives, novel ingredients and GMOs be mentioned on the label. In 2006, a Regulation on nutrition and health claims was published. Nutrition claims must conform to the annex to the regulation.<sup>50</sup>

The Regulation provides opportunities for small-scale producers to use quality symbols<sup>51</sup> as a means of promoting their products, without the long and costly process of obtaining a trademark for their product.

The origin of a product must be labelled if omitting this information would mislead the consumer. In most other situations, this is voluntary. Some designations of origin are protected. Regulation of agricultural indications establishes rules for the protection of certain designations of origin (PDO) and geographical indications (PGI) on agricultural products. The regulation extends to the recognised traditional specialties, and to the use of terms referring to the 'organic' production method (such as 'eco' and 'bio').

### **c) Traceability of food and feed throughout the food chain and trade**

Tracing food and feed throughout the food chain is very important to protect the consumers, particularly when food and feed seem to be found faulty.<sup>52</sup> The General Food Law Regulation

<sup>48</sup> Article 2 section 2 of Regulation 1169/2011.

<sup>49</sup> Article 7 section 1 of GFL. Article 16 of Regulation 1169/2011.

<sup>50</sup> The annex states among other things that the expression 'light' may be only used in case of a reduction of at least 30% of certain nutrients or energy. Health claims, e.g. claims about the effects of a certain food on health, must be science based and approved. Foods bearing health claims are sometimes called 'functional foods'.

<sup>51</sup> Names or signes used on their certain products which corresponds to a specific geographical location or origin, according to the list of the Union's GIs.

<sup>52</sup> Traceability Article 18 of GFL. See the Factsheet on Traceability Regulation (EU) No. 931/2011.

defines traceability as the ability of the producer or authority to trace and follow food, feed and their ingredients through all stages of production, processing and trade.<sup>53</sup> The concept of traceability extends to the ability to trace the substances intended to be, or expected to be incorporated into a food or feed, through all stages of production, processing and distribution.<sup>54</sup>

The aim of traceability is to be able to identify the source of a food safety problem quickly and to conduct the case in question properly by the withdrawal of affected products from the market.

Traceability enables step by step, in a back and forward manner, to identify and reconstruct the various elements of food-chain, and

- identify the critical elements of production, processing, distribution including by whom the product was produced, processed, exported, of its origin,
- facilitate withdrawal of faulty food/feed from the market,
- provide consumers with accurate information on food and feed,
- affects importers to be able to identify the origin of the product in question,
- obliges producers to be able to identify at least the immediate supplier and the immediate subsequent recipient of the product in question.

If a food safety incident occurs, this information must enable the authorities to identify the origin of the problem and its dispersal swiftly in order to eliminate the cause and take care of the consequences. Finally, entrepreneurs that have reason to believe that a food they have brought to the market may not be in conformity with food safety requirements are under obligation to withdraw it from the food chain and recall it from consumers.<sup>55</sup>

#### d) The entrepreneur's responsibility

The Regulation establishes the principle that the primary responsibility for ensuring compliance with food law, rests with the food business operator. producers as entrepreneurs bear the primary responsibility for ensuring that foods or feeds satisfy the requirements of food law.<sup>56</sup> If they have reason to believe that their food or feed is unsafe, they shall immediately inform the competent authorities and withdraw the food or feed from the market and – if need be – recall it from the consumers.<sup>57</sup>

If the food or feed in question is unsafe, the producer as a market operator is simultaneously obliged to withdraw or recall it, and to notify the competent national authorities, to take appropriate measures to reduce or eliminate a food safety risk. The science-based European law

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<sup>53</sup> More detailed traceability requirements in the context of the General Food Law Regulation are laid down for certain specific sectors; Foods of animal origin: Commission Implementing Regulation (EU) No 931/2011; Sprouts and sprout seeds: Commission Implementing Regulation (EU) No 208/2013.

<sup>54</sup> Article 3 section 15 of GFL.

<sup>55</sup> Article 19 of GFL.

<sup>56</sup> Article 17 Section 1 of GFL.

<sup>57</sup> Withdrawal, recall and notification for food and feed (Articles 19 and 20) in relation to food and feed safety requirements (Articles 14 and 15).

making has international effects too.<sup>58</sup> For situations of scientific uncertainty, the precautionary principle is to be applied.

Primary responsibility for ensuring compliance with safety requirements of food law rests with food-entrepreneurs. To complement and support this principle, the competent authorities of the Member States must assure adequate and effective controls.

## **Instead of Completion**

The correlation of regulation in two fields of law is well demonstrated as legislation of having a consumer and environmental protective character. These naturally joining areas represent the significant element of integrated agri-food legislation, as a part of safety law in recent years.

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<sup>58</sup> Commercial connections to WTO, regarding to judgement the impacts of growth-promoting hormones and genetic modification of concerned foods.