

SAFFI Policy Brief series on: Food safety and public health within the frame of the EU legislation



Policy Brief n.2

Consumer protection. 2.1 Control over the trade of food products within the European Union

2. Consumer protection

A large and important legislative chapter of the European Union is dedicated to consumer protection through Article 169 of the TFEU¹⁴. With this provision, the Union is committed to protecting health, safety and economic interests of consumers as well as promoting their right to information, education and organization to safeguard their interests. In particular, the European Union, through its legislation and regulations, pursues the objective of guaranteeing citizen participation in the single market through greater protection in the purchase of goods and services. Therefore, this explicit involvement of consumers implies the definition of an evolving regulatory framework. That is, one that is capable of identifying the tools and filling the gaps in existing norms and practices in Europe and through a process of education, information and awareness, pursuing the objective of creating an environment in which consumers can choose the best offers for products and services.

Moreover, Article 191 of TFEU¹⁴ completes the European regulatory framework by providing for the precautionary principle to protect not only the environment, but also health. This is a general principle codified at Union level, which compels the competent authorities (including local authorities) to adopt appropriate measures in order to prevent potential risks to public health, safety and the environment (including foodstuffs), by means of providing, in advance, protection of the application of the principle of prevention, in the absence of the verification of a causal link between the harmful event and the resulting prejudicial effects. The application of the precautionary principle, in the case of a situation in which the potentially dangerous effects of a product or of a process have not been identified and in which the preliminary scientific evaluation has not made it possible to determine a potential risk with sufficient certainty, has made it possible to prevent the distribution or to withdraw dangerous food products from the market, thus letting the protection of the right to health or of the environment prevail over economic interests¹⁴. This principle must be certainly coordinated with those of free competition, freedom of establishment and freedom to provide services provided for by the TFEU.

2.1 Control over the trade of food products within the European Union

Article 36 of the TFEU¹⁴ states that quantitative restrictions on imports and measures having equivalent effect (Article 34 TFEU) and quantitative restrictions on exports and measures having equivalent effect (Article 35 TFEU) may be enforced on imports, exports and goods in transit on grounds of public morality, public order, public security, health protection, life or animal protection or plant preservation. However, it is also indicated that such prohibitions or restrictions must not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. In this regard, the Member



Horizon 2020
European Union Funding
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*This project has received funding from the European Union's Horizon 2020
research and innovation programme under grant agreement No 861917*

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State, before importing animals or products of animal origin from a country of the European Union, may carry out controls of a non-discriminatory nature. In particular, Article 10 of Regulation No. 1235/2008 of the European Commission¹⁵ provides that a list must be drawn up of the inspection bodies and authorities recognized for the purposes of equivalence that are competent for carrying out controls and issuing certificates in third and public countries. The general requirement for the export of foodstuffs is compliance with the food hygiene regulations in force in the exporting country, and the basic requirement in exporting countries is compliance with the regulations of the European Commission¹⁵. Therefore, it is indispensable for the producer to guarantee the traceability of food products from their origin to the consumer's table. European legislation foresees that in situations of potential danger for the consumer in the production of a food product, it is necessary to apply procedures capable of identifying the product placed on the market and withdrawing it even when it has been exported to other countries. The safety of exported products requires the observance of conditions of reciprocity with third countries, and initiatives related to this requirement allow for the specific objective of strengthening and improving product safety through effective market surveillance throughout the EU.

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