

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



Policy Brief n.3

Food safety in the European legal system.

3.1. The relationship between European and national legislations. 3.2 Risk management: traceability requirement

3. Food safety in the European legal system

The regulatory evolution of food safety involves a plurality of players and provides for action plans with different procedures. Initially, the legislation on the safety of products marketed within the European Community¹⁶ (Directive n. 92/59/EEC, and the subsequent Directive n. 2001/95/EC, on industrial products, including foodstuffs) required operators to place on the market products that were safe for human health¹⁶. However, this regulation evolved in the nineties, and following numerous episodes that involved the public health of the European population, (such as food contaminations and environmental disasters) the community regulation of production and marketing of food and feed was modified. In particular, according to a food strategy pursued by the European Union, both a legislation on the safety of food products and animal feeds and a regulation based on scientific evidences have been foreseen as a legislative support to the formal deliberations and control acts³. Therefore, European legislation provides for the control of food at all stages of the food production process, from production, processing, transport, distribution to supply to the consumer³. In this context, Union law also specifically provides for preventive and subsequent protection in favor of the consumer, notwithstanding the promotion of free trade of food products. The European Union, however, also protects possible obstacles to trade, disparities in safety standards in Member States and possible distortions caused by competition in the internal market. With regard to the consumer and the protection of his or her health, the precautionary principle provides for safety requirements for every product placed on the market and intended for consumption and establishes that a food product is considered safe when it does not present any risk, or presents reduced and acceptable risks^{2,3,4}. The efforts of the European Commission are therefore directed to food safety and to the development of advanced and scientifically useful procedures to minimize the risks of food contamination, starting from foods produced for infants, as it is well evidenced by the project Safety food for infants (SAFFI) financed by the European Commission in the framework of the Horizon 2020 program to monitor risks^{6,17}.

Regulation No. 178/2002 of the European Parliament and of the European Council of January 28, 2002¹⁸ establishing "the general principles and requirements of food law" and laying down "procedures in the field of food safety" represented a milestone in European Union food legislation. In fact, this regulation aims to harmonize the free movement of food with the principles of food safety, inspired to the search of a high level of protection of health and animals and to the control of the movement of food and feed along the entire chain of agricultural products, following the principle of protection of food from farm to table^{2,18}. Although complex and articulated in a variety of norms that need to be balanced and integrated, the European legislative framework provides that each of its provisions is applied to the



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extent that there are no specific provisions with the same objective that regulate the safety of the products in question^{3,18}. In particular, the provision of the principles of food legislation in Regulation No. 178 of 2002¹⁸ has allowed for the issuance of further regulations, directives and decisions governing various aspects of food safety. In this regard, when there is specific legislation, it applies to aspects or categories of risks not foreseen by general legislation¹⁸. For example, in the case of legislation relating to genetically modified organisms, the integrating norms refer to various legislative passages¹⁹ that include Regulation (EC) No. 1829/2003, Regulation (EC) No. 1830/2003, Regulation (EC) No. 1333/2008 of the European Parliament and of the Council¹⁹, which established a Union list of food additives, and finally²⁰, Directives No. 2008/60/EC, No. 2008/84/EC, 2008/128/EC and 2009/10/EC, concerning specific purity requirements for food additives²⁰. Therefore, legislation does not always help to clarify the rules to be followed in the field of food safety, whereas simpler and clearer legislative norms would be necessary to apply to such an important area of interest for public health as food safety and its monitoring.

While at the European level, there are various areas of intervention and coordination in the field of research and regulation, at national level there is a sector of discipline and collaboration between operators in the food chain. For example, regarding the attribution of competences, Regulation No. 178 of 2002²¹ has appointed the legislative functions to Community institutions. On the other hand, it is foreseen that the Commission, the government bodies of the Member States and the national and European Union authorities with their respective committees and bodies carry out a co-administrative action for the purpose of achieving food safety which seems however not to be always effective. In this regard, Article 23 of Regulation No. 178 of 2002, for example, entrusts the European Food Safety Authority with a different role and different tasks, such as the creation of a system of networks between organizations, and assigns responsibility for the functioning of these structures, thus delegating responsibilities and in some way removing the possibility of a closer, direct, and effective control²¹.

3.1. The relationship between European and national legislations

The relationship between European and national legislation requires that the principle of coordination be applied. Therefore, the above-mentioned European legislation is flanked by the regulations of individual Member States, in order to prevent risks to the health and safety of the consumer. However, as far as food safety is concerned, European legislation has not excluded the regulatory intervention of Member States. Each Member State is required to organize its own system in accordance with the European coordinated system of food safety³. Therefore, the current food safety discipline can be found in the coordination between the European system and those of the individual Member States and between the latter and any local legislation. Although it can be further improved, we can consider the European food legislation as complete, since it regulates the actions of the operators involved and it contextualizes and differentiates, through a general legislation applicable to food and feed and a special legislation in those areas where it is necessary, a more specific consumer protection, which includes food hygiene, the use of pesticides, food supplements, colorants, antibiotics, vitamins, minerals and similar substances³.



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3.2 Risk management: traceability requirement

Consumer protection is concerned with preventing harm from the circulation of foods that are hazardous to health. This preventive function is identifiable in the regulations that prohibit the marketing of foods that are either harmful to anyone, or to individuals who require specific protection against the intake of certain foods²². Aforementioned Regulation No. 178 of 2002²¹ constitutes the foundation in the food sector of a high level of protection of the health and interests of consumers and at the same time of the functioning of the internal market. In addition, the analysis of hazards and critical points in the system of production and distribution of food products is regulated by technical rules taken from the Hazard Analysis and Critical Control Point ("HACCP") system. According to the existing Regulation²², there is an obligation for producers and distributors of food products to place on the market products that comply with predetermined safety requirements, which include risk analysis (Art. 6), the precautionary principle (Art. 7), protection of consumer interests (Art. 8), transparency in the development of food law (Art. 9), consumer information (Art. 10), safety obligations for food business operators (Art. 11-20), establishment of the European Safety Authority (Art. 22-49), and procedures related to food emergency situations (Art. 50-57)^{22,23}.

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- Two food safety authority institutions (ZAIQ and ANSES)
- Three European technological SMEs (CremeGlobal, Computomics, BDS)
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