

## EUROPEAN FOOD LAW, YOUNG GOVERNANCE

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### **Abstract**

*Together with the growth and development of the European Union, the European Food Law has experienced fundamental modifications. If before the Bovine Spongiform Encephalopathy scandal, the food safety legislation was market oriented, nowadays its direction converges to the protection of the consumer. As a result, the actual food safety set of laws bases itself on scientific opinion, together with other factors that the risk manager has to consider when legislating.*

*This paper is depicting the steps taken by the European food legislation until reaching its actual form. It starts with describing the frame in which the European Food Law was approached before its changes, and it continues with presenting the drafts needed to build its present shape. In addition, because the current legislation is founded on the concept of risk analysis, the term will be elaborated both from a general perspective but also with respect to its applications in the food industry field.*

**Key words:** food law, food safety, GFL, Codex Alimentarius, risk analysis.

### **INTRODUCTION**

The legislation governing food industry at European Union level can be considered a new type of governance, due to the fact that it is the resultant of fundamental and sharp, but recent transformations.

If before 1997 the law was structured in such a way to assure and promote the good functioning of the Single European Market, after this time limit, the safety of the consumer becomes of first importance, and it grows to be a decisive unit in drafting the legislative acts.

In this way, in the new basic act (*Reg. (EC) 178/2002*) in its 6(1)<sup>th</sup> article, it is stipulated that '*food law shall be based on risk analysis*'. Food legislation becomes par excellence science-based, and for increasing the confidence in this new perspective, the EU recognized body responsible for the scientific research and makes the results available to the European Commission is an independent authority (European Food Safety Authority – EFSA).

The next section of this paper will treat details with regards to the history and evolution of the risk analysis both from a general perspective as

well as its role within the international and European food legislation.

### **THE CONCEPT OF RISK ANALYSIS**

Historically, the first mentions about risk analysis are dating back in the year 3200 before Christ, when the Asipu group, (scholars from the old Mesopotamia) was in charge to provide advice and recommendation when there was the case of a chancy situation (Proske 2008, referring to Convello 1985). Such type of case assessment, can be considered as an incipient kind of risk analysis (Grier, 1981). However, the resolutions proposed by the Asipu experts from the Tigris-Euphrates valley were based on the signs they received from the gods. A closer meaning of the risk analysis term to the one used nowadays, dates from the XIV century when the most cost-effective way of transportation for commerce, was by ships. In that period, the term risk was used to describe the hazardous situation in which a shipment could fall into (Proske, 2008).

Besides the food and pharmaceutical field, risk analysis is a term that in present is used in many other areas, such as environmental

studies, banks and insurance covers, economy, aeronautics or in agriculture (Szajkowska, 2012).

Risks can be both analysed from a qualitative perspective as well as from a quantitative point of view. The qualitative approach is known to be less transparent than the quantitative ones, which are based on numbers, statistics and modelling.

### Risk analysis and the food field

Similar to other dynamic systems (Jongen, Meulenberg, 2005), foodstuffs are subject to the laws of chemistry and of physics, through the fact that they undergo changes in time. Both the possible changes, as well as the initial status of the food can lead to hazards (physical, biological or chemical). As a result, food can represent a risk for the human beings as well as for the animals and the environment (Lunning, Marcelis, 2008). Recently, WHO has shown that foodborne diseases cause 230 000 deaths each year. The most common reason for these deaths are the diarrhoeal diseases. Alarmingly, 125 000 of children under 5 years old died due illnesses caused by contaminated food (WHO, 2015).

In the past, people performed risk analysis by selecting the types of food they consumed, but also by acquiring information about what can be eaten and how to prepare certain products. Such knowledge was handed down to the next generations, became habit and was enriched with the lapse of time (The Nordic Group of Ministers, 2002). Nonetheless, the high number of foodborne illnesses, the variety of food products as well as the internationalisation of commerce, have led to the necessity of a general guide to be used in analysing risks. As a result, both the national and international levels were expected to release such guidelines. This request, of presenting a harmonised way to cope with risks, was handled by the World Health Organization in Codex Alimentarius (FAO, WHO, 2005). Several definitions were provided, and the definition of risk analysis states: 'Risk analysis – a process consisting of three components: risk assessment, risk management and risk communication.' (Codex Alimentarius Procedural Manual, 25<sup>th</sup> edition, 2016).

A similar definition was provided by the European Union in the basic law, *Regulation (EC) 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety*. Additionally, this act stipulates that risk analysis is fundamental in obtaining 'a high level of protection of human life and health' (Art. 6(1), Reg. (EC) 178/2002).

The differentiating element between the definition introduced by Codex Alimentarius and the one proposed by the European Parliament and the Council, is that, at European law level, the three components of risk analysis are *interconnected*, while the Codex Alimentarius Commission only lists them. However, in general the concept or risk analysis is illustrated as following:

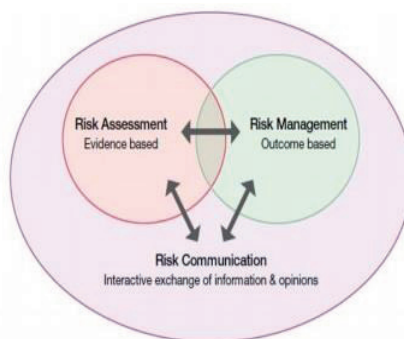


Figure 1. The concept of risk analysis (Source: <http://apvma.gov.au/node/15506>)

The illustration depicted in *Figure 1* shows that the components of risk analysis are interconnected, so they can influence each other.

## HISTORY OF THE EUROPEAN FOOD LAW

### The Bovine Spongiform Encephalopathy Crisis

The Bovine Spongiform Encephalopathy (Hereinafter: BSE, BSE Crisis) Crisis started when the British Ministry of Health declared that the possibility of the disease being transmissible to people exists. The corresponding period in which this scandal

evolved, coincided with the installation of the European Single Market. Together, these two events have challenged the population's trust in the food industry and in the way the European Single Market functioned. This unusual framework has led to the food safety code being described as 'contested governance' and it raised major questions about the functioning of the legislation of the food field : 'who, where, how and in what basis the decisions are taken' (Ansel, Vogel, 2006).

In the report that resulted from the investigations regarding the BSE scandal, (hereinafter: the BSE report), a tone of revolt can be distinguished, which reflects the lack of trust the population had towards the system that governed food safety.

According to the BSE report, communication (in the sense of informing the public and in the sense of cooperation) was considered to be poor during the fight with the disease. The dissemination of knowledge was defective and the possible channels to be used for communication were not known by the possible participants to the consultations. This reasoning is based on the text of the BSE report, which describes how the director of the Sanitary Services himself, Mr. Meldum, was not aware of the risks that the disease could imply. In this context, Mr. Meldum declared that there are no risks for human-beings, but the main problem was the population being concerned of the emergence of a new illness. In addition, the Sanitary Services director considered it was not a matter of consumer safety, but a problem targeting their trust (BSE Crisis Report, 1997).

### **Green Paper and White Paper**

In the same year as when the BSE Crisis Report was drafted, the institutional scene of the European Food Law started to be adjusted. The worries of the consumers have been listed and presented in May 1997 when the European Commission published *The Green Paper on European Food Law*, which served as a cornerstone for the White Paper, published in January 2000 (Goodburn, 2001).

*The White Paper on Food Safety* is the response of the European Commission on the consequences of the BSE crisis over the general condition of the population. Policy makers had

to reflect on the answers they gave, in such a way to regain the consumer trust.

The revolution is that, in 2000, on the base of the newly-published White Paper, the European Commission is moving its attention from the well-functioning of the Single Market to the welfare of the consumers. The simple consumer is now able to express its opinions on food safety matters; this is an important step, as it can be seen as an attempt of the European Commission to involve more parties at risk management level, when decision are taken. In addition, The White Paper brings the new perspective for food law that of a food safety policy based on risk analysis and on the precautionary principle. As a result of the BSE scandal, traceability is to be considered for securing a 'successful food policy'.

Last but foremost, together with The White Paper, Europe takes a big step in the restructuration of the food legislation by setting up the European Food Safety Authority (EFSA). This is the way to convert food law into a science-based governance and to perform the risk assessment in an independent manner, excluding the other factors (such as: consumer perception, political or social issues, environmental related aspects, etc.) that may be taken into account at risk management level. EFSA only delivers scientific opinions and, according to the description made in the White Paper, it is characterized by the following major qualities: independence, transparency and eminency.

### **General Food Law**

*Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety* (General Food Law or GFL) was published in January 2002 and sets the actual European principles and legal expectations in the food safety field, as well as for the feed safety. Additionally, GFL provides with definitions for the most important terms used in food law. In this sense, the general act defines 'food' (Art. 2, GFL) and with *article 14(1)*, it sets the fundamental obligation '*food shall not be placed on the market if it is unsafe*'.

Independently from the general objectives setup as stipulated in article 5 (to assure a high level of life protection and human health and to protect the interests of the consumers, good practices in the food trade and animal health and welfare protection), Regulation (EC) 178/2002 describes the European Food Safety Authority, how it is installed, the mission of EFSA as well as its obligations. It is believed that this regulation makes European food legislation to be considered a respected body within the general laws at European Union level (Berends, 2006).

Noteworthy, GFL makes it very clear that the consumer protection is the major objective of food law, while the functioning of the Single Market (as established in the Treaty on The Functioning of the European Union at article 28) only has the back seat.

GFL is the legislative act that is in vigour in present and it serves with the basic principles for the policy-makers in elaborating specific legislation.

## CONCLUSION

European Food Law has known abrupt changes in the last 30 years, after the BSE crisis acted as a trigger for the total shift in the governance. Before 1997 the free movement of goods was promoted, while nowadays the focus is on the high level of consumer protection.

The actual legislation becomes harmonized to the principles stipulated in Regulation (EC) 178/2002 and the evolution of laws brings all the wings of food law on the same ground, that of protecting the consumers.

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