



The relation between EU food safety policy, Codex Alimentarius and WTO¹

Evolution and current challenges

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Abstract

If imports and exports of food and agricultural products are taken together, the European Union is the world's largest trader of these goods. International organizations such as the Codex Alimentarius Commission (CAC) are entrusted with setting international standards for "safe" food, and the World Trade Organization WTO establishes principles for "fair" trade through its Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). This paper traces the historical development of EU food law and outlines current and future challenges.

Keywords: globalization, world trade, food system, food law, food safety, consumer advice, consumer protection

Introduction

EU Food law has gone through different development phases. At the beginning, it was a rather patchy spill-over effect of the development of the internal market. In a reaction to the BSE crisis in the 1990s, a real EU food policy was born with its own overarching principles, in particular the one guaranteeing a high level of health protection, and institutions – separate bodies pursue risk management and risk assessment.

Most of the food we consume today do not depend on local production and do not have a seasonal character. The products of globalization constitute a substantial part of our diets. Taking imports and exports of food and agricultural products together, the EU is worldwide the biggest trader of these goods. These international links make food safety concerns a global concern, and "international trade without unjustified barriers", which I would like to call "fair" trade in this essay, in "safe" food is therefore an inherent interest of the EU [1].

The question is who defines what is "fair" and "safe" in international trade. International organizations like the Codex Alimentarius Commission (CAC) are entrusted to set international standards for "safe" food, and the World Trade Organization (WTO) with its Agreement on the application of Sanitary and Phytosanitary Measures (SPS), sets out principles for "fair" trade.

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Abbreviations and glossary

BSE	bovine spongiform encephalopathy
CAC	Codex Alimentarius Commission
CCEURO	Codex Regional Co-ordinating Committee for Europe
EFSA	European Food Safety Authority
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
GATT	General Agreement on Tariffs and Trade
horizontal standards	here: cross-product standards, e.g. food labelling
IPPC	International Plant Protection Convention
MRL	Maximum Residue Limits
OIE	<i>Office International des Epizooties</i> /World Organization for Animal Health
soft law	here: non-legally binding act
SPS	Agreement (of the WTO) on the application of sanitary and phytosanitary measures
UN	United Nations
vertical standards	here: product-specific standards, e.g. the cheese regulation
WHO	World Health Organization
WTO	World Trade Organization
WTO Panel	a regulated dispute settlement procedure of the WTO

This essay shows the relation between EU food safety policy, the Codex Alimentarius, and the WTO SPS Agreement, and the challenges for the EU resulting out of its interaction with these organizations.

EU Food Legislation

The creation of the internal market had the objective to ensure free movement of goods between EU Member States, which required the harmonization of standards also for food and agricultural products. To that end, Member States had to agree what fulfils the definitions of chocolate or jam and countless other “vertical” standards (♦ Glossary) for food products.

This period ended in 1979 with the famous “Cassis de Dijon ruling” [2] of the Court of Justice of the European Union, which established the principle of mutual recognition for the internal market. According to this principle, goods lawfully produced in one Member State cannot be banned from sale on the territory of another Member State, even if they are produced to technical or quality specifications different from those applied to its own products, unless such prohibition can be based on the need to protect human health or other exceptions under Article 36 of the Treaty

on the Functioning of the European Union (TFEU). In a second phase, following the *Cassis de Dijon* ruling and the principle of mutual recognition introduced therein, the EU developed food legislation with the aim of so-called “horizontal” harmonization to cover as many products as possible, for example through labelling requirements.

The third phase of harmonization took place in the aftermath of the BSE crisis in the late nineties of the previous century, and led to the adoption of the so-called General Food Law [3] in 2002. This regulation, laying down the general principles and requirements of the EU food law, is still our reference in 2021. A recent “fitness check” [4] demonstrated its relevance and fitness for current food safety issues.

The declared objective of the EU food law is the protection of human life and health, and consumer interests. It includes also fair practices in food trade, and taking into account animal health and welfare, plant health and environment. Its general principles are firstly that food safety measures must be based on



science and a proper risk analysis. Secondly, the General Food Law refers to the situation when scientific evidence is inconclusive, and with this establishes the precautionary principle for measures which have to be, however, provisional. Finally, it emphasizes the importance of transparency and adequate information of the public in the decision-making process.

The General Food Law establishes the European Food Safety Authority (EFSA), which is the independent EU body responsible for risk assessment. The principles of EFSA's work are independence, transparency, and scientific excellence.

♦ Figure 1 shows the risk analysis framework with its three components: risk assessment, risk management, and risk communication. The responsible actors are EFSA for risk assessment, the European Commission (and co-legislators) for risk management. Both are responsible for risk communication with the public within the areas of their competences, which means that the Commission only communicates its risk management decisions. The General Food Law makes explicit reference to international standards. It requires taking them into account when proposing new food safety measures. It also foresees exceptions from this general rule, in particular if the use of the international standard will not achieve the required level of protection in the EU.

Codex Alimentarius

The Food and Agriculture Organization (FAO) and the World Health Organization (WHO), the so-called parent organizations, established the Codex Alimentarius in 1963. It was a response to growing consumer concerns about potential hazards related to foods and the proliferation of national food safety regulations impeding international trade. As set out in Article 1 of Codex Alimentarius statutes [5], its main purpose is to develop food standards "protecting the health of the consumers and ensuring fair practices in food trade". In 2020, the Codex Alimentarius Commission (CAC) comprises 189 Member Countries and 1 Member

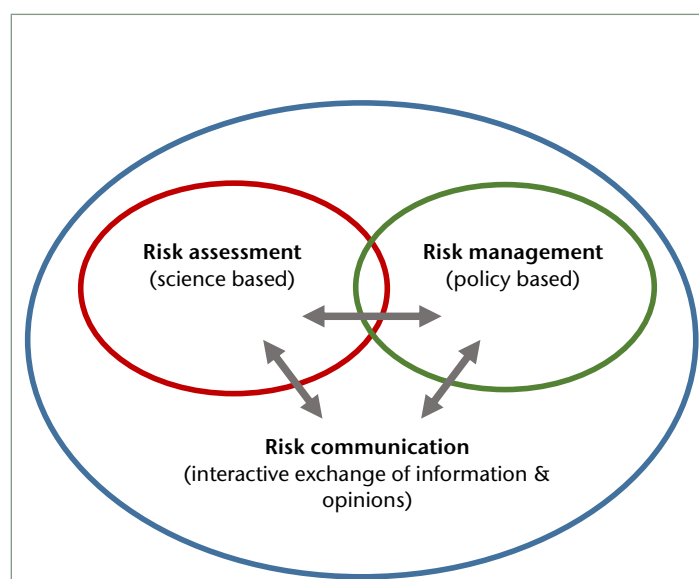


Fig. 1: Risk analysis framework

Organization, namely the EU, which became a Codex Alimentarius member in 2003 [6].

All major food-trading countries in the world are members of Codex Alimentarius, and represent all continents of the world. The EU and its Member States are members of the regional Committee CCEURO, which is the biggest regional Committee with 52 Members plus the EU.

Currently the CCEURO Coordinator is Kazakhstan; Germany announced its willingness to take over this function in 2022, which has to be confirmed at the next CAC meeting in autumn 2021.

In 2019, the CAC adopted a new strategic plan [7] for Codex Alimentarius, in which it laid down what it wants to accomplish. The vision "where the world comes together to create food safety and quality standards to protect everyone everywhere" demonstrates its ambition to be the leading food standard setting body in the world. The mission statement indicates how it endeavors to achieve this and stresses its belief in a strong scientific basis for food standards. The organization wants "to protect consumer and promote fair practices in the food trade by setting international, science based food safety and quality standards". The elaboration of Codex Alimentarius standards follows a well-described 8-step procedure ([5], Procedures for the elaboration of Codex standards and related texts, Procedural Manual; p. 29ff.). On average, it takes about four years to develop and adopt a standard, which is based on a risk assessment based on available scientific data from Joint FAO/WHO expert groups² ([5], Section IV: Risk Analysis). Its conclusions are presented to the risk manager in the various Codex Alimentarius Committees ([5], Section V: Subsidiary bodies) (about a dozen active Committees) dealing with various subjects. The risk managers should review these conclusions and, if they agree, suggest their adoption as a new standard to the Codex Alimentarius Commission, which is the decision-making body of the Codex Alimentarius, meeting once a year either in Rome (FAO) or Geneva (WHO).

Codex Alimentarius standards do not represent legally binding norms, but serve as guidance for national food safety regulations ("soft law"). Nevertheless, one can argue that the biggest value of this "soft law" approach is that national experts of food law discuss these



draft standards based on a scientific evaluation. The result of these exchanges usually finds its way also into national laws (at least as concerns definitions, the scientific considerations etc.) [1] and may lead to a gradual harmonization of international food standards.

Codex Alimentarius does not dispose over an enforcement mechanism. Countries not applying the adopted standards do not face any restrictions or penalties within the Codex Alimentarius system. The enforcement comes “indirectly” through the World Trade Organization (WTO) mechanism.

A recent study of the FAO evaluated the use of Codex Alimentarius Maximum Residue Limits (MRLs) for pesticides in international trade and analyzed trade in rice of the 19 major rice producing and trading countries. It concluded that, in general, most of the developing countries analyzed rely strongly on Codex Alimentarius MRLs, showing high levels of harmonization with Codex Alimentarius. For the rest of the sample, alignment with Codex Alimentarius tends to be quite low, usually below 25 % [8]. This study showed that automatic harmonization with Codex Alimentarius MRLs is not the norm because such practice is not embedded in national legislations. This is true also for the EU, where many legally binding acts refer to Codex Alimentarius or other international standards, which are, however, not directly applicable in the EU. Rather, these standards have to be integrated into EU law on a case-by-case basis.

If EFSA considers that a draft Codex Alimentarius standard is insufficient to achieve the required level of protection, the EU puts in a “reservation” during the adoption procedure. The EU states transparently that the new Codex Alimentarius standard will not be binding for the EU.³ This situation appeared quite frequently over the last years as concerns the setting of Maximum Residue Levels (MRLs) for pesticides.⁴

World Trade Organization

The WTO is a supranational, consensus driven organization with 164 Members and the successor of GATT (General Agreement on Tariffs and Trade). The WTO Agreement on Sanitary and Phytosanitary Measures (SPS) is the most relevant for trade measures related to food safety. The SPS Agreement addresses a set of measures to protect human, animal and plant health within the territory of the WTO member. It is in force since January 1995, and applies to all measures that may affect international trade.

The WTO agreements are binding and the WTO obtains a Dispute Settlement Understanding, which provides an arbitration procedure to resolve conflicts. The WTO does not have the power to enforce decisions of the arbitration, but it can condone, if the party found at fault does not implement the decision, the winning party may implement economic sanctions. These can take the form of additional import levies on goods from the state found at fault, or the reduction of tariffs for imports ([1], p. 68). The SPS Agreement recognizes the right of every country to establish rules for food safety or consumer protection. Such regulations, however, can-

not constitute unnecessary or discriminatory barriers to trade. In judging whether national measures are justified, the SPS Agreement appeals to the authority of science – as a supposedly independent arbiter.

To comply with the core obligations of science-based SPS measures, member states must either adopt existing international standards, or justify their deviating national measures with sufficient scientific evidence. The most important international standards are set by the so-called three sisters of the SPS Agreement (Codex Alimentarius, OIE, IPPC; ♦ Glossary). The ones relevant for food and food safety are mainly found in the Codex Alimentarius (♦ Box on p. 208).

The power of the Codex Alimentarius changed when the WTO included it in the global trade regime as an authoritative international source of food standards. WTO members who follow Codex Alimentarius standards are liberated from the burden to prove the necessity of the SPS measures they take. If they cannot base their measures on Codex Alimentarius, they have to prove that their measures are underpinned by scientific evidence. Hence, once a Codex Alimentarius standard is established and a Member does not intend to apply it, in case of a WTO Panel it may need to provide the scientific evidence for deviating from the international standard.

² The scientific expert groups are partially financed by the core budgets of FAO and WHO, to which the EU and its Member States are major contributors, and voluntary contributions from Codex Alimentarius Members. In 2018, the EU signed a grant agreement of 420,000 € with the WHO to support the scientific work of these expert groups.

³ cf. [8], p. 49: “During the Codex step-process for the development and adoption of new Codex pesticide MRLs, only the European Union actively notifies whenever a Codex MRL is not going to be adopted in the European Union, and provides the (scientific) reasons for not adopting the Codex MRL. Such information was found very informative in terms of preparing this report, but was not identified for any of the other countries analysed.”

⁴ There are also cases where the EU cannot accept the development of Codex Alimentarius standards and it “objects” to its adoption in the Codex Alimentarius Commission. There is a case pending in the Codex Committee (Codex Committee on Residues of Veterinary Drugs in Foods, CCRVDF) dealing with veterinary drugs, where the EU objects to the advancement in the step procedure for the development of a product, which can be used as a growth promotor in animals. The EU legislation does not allow the use of growth promoting substances in (healthy) food producing animals and therefore, a standard for these products should not be set, even if the scientists consider the products to be safe.



Also today, EU SPS measures are subject to strong criticism by the international community in the WTO. The number of Specific Trade Concerns (STCs) raised in the WTO SPS Committee meetings may be a good indicator for the criticism the EU is faced because of its food safety measures. Recently, WTO Members expressed additional concerns about the impact of the EU “Farm to Fork” Strategy on international trade [9]. The Strategy, adopted in May 2020, aims to increase the sustainability of food systems by reducing the use and risk of pesticides also for the environment, fighting Antimicrobial Resistance (AMR) through the reduction of use of antibiotics in animal production, increasing animal welfare standards and improving consumer information through better labelling requirements.

The EU promotes a global transition towards sustainability of food systems. At the international level, the UN Food Systems Summit, to be convened by the UN Secretary General in 2021, will set the tone on the importance of sustainable food systems for the years to come. It has the ambition to launch bold new actions to transform the way the world produces and consumes food.

The EU supports the objectives of the Summit, embracing all the complexity of food systems and reviving the progress on the Sustainable Development Goals. The Summit will be a unique opportunity to promote the objectives of the “Farm to Fork” Strategy and seek global support for the main orientations of the European Green Deal.

One prominent example on how these obligations and the references to international standards played against the EU, is the case titled “EU Hormones”. The EU was confronted with this system based on risk assessment in a dispute about meat from US-American cattle that has been treated with hormones. The EU refused to admit this meat to its market. In 1995, the Codex Alimentarius Commission approved a standard, setting maximum limits of residues for several growth-promoting hormones. One year later, the US and Canada filed a complaint under the WTO, and were found to be right. The WTO Panel stated that the EU did not provide scientific evidence required under the SPS Agreement. The EU referred to the precautionary principle. Up until now, the EU does not accept hormone treated beef, but has to compensate beef producers through a “tariff rate quota for hormone free beef” ([1], p. 72).

Conclusion and outlook

The EU food law requires taking into account international standards set by Codex Alimentarius, but there is no automatic harmonization with Codex Alimentarius standards. The EU will only apply a Codex Alimentarius standard, if EFSA confirms its safety. Even if the EU cannot apply a Codex Alimentarius standard, the EU’s approach of transparency in Codex Alimentarius Commis-

sion (CAC) enables trading partners to adapt to the EU import conditions and to limit trade impediments.

The WTO included Codex Alimentarius as an authoritative international source of food standards. Despite this “empowerment” of Codex Alimentarius standards, the level of harmonization in sensitive areas like pesticide residues is low. Codex Alimentarius implicitly acknowledges this situation in Goal 3 of its Strategic Plan when it suggests to “increase impact through the recognition and use of Codex Alimentarius standards” ([17], Goal 3, p. 14).

The EU “Farm to Fork” Strategy will bring new challenges for the EU in its relations with international trading partners who do not share our assessment of the challenge of climate change and environmental degradation. A clear statement of the Heads of States at the upcoming UN Food Systems Summit to limit the impact of food systems on climate and biodiversity would give global support also to many elements of the EU “Farm to Fork” Strategy. In the future, “sustainability” may set the frame for the work of international organizations promoting “fair” trade in “safe” food.

Conflict of Interest

Dr. Dirk Lange was Head of the Multilateral International Relations Unit in the European Commission’s Directorate-General for Health and Food Safety (DG SANTE) until August 1, 2021.

The opinions expressed by the author in this paper are his personal opinions and do not necessarily reflect the official position of the European Commission.

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