European Food Law – Beginning and Development

Jasna ČAČIĆ (✉)
Božica RUKAVINA
Edita VOLAR-PANTIĆ

Summary

The European Economic Community was created in 1957 when the six countries signed the Treaty of Rome. Its original goal has been to create a common market. The main instruments in achieving this goal could be defined as four freedoms: the free movement of labour, the free movement of services, the free movement of capital and the free movement of goods. The free movement of goods has been the most important segment for developing the food law. Although all Member States agreed generally about the free common market, in practice each of the states has been looking for and finding different ways of protecting its own markets. This tendency of Member States is evident through the development of European food law. The European food law development can be divided into two main phases: the first phase that was oriented on the market and the second phase with orientation on food safety and the market. There are two periods during the first, market oriented phase: the period of harmonisation through vertical legislation and the period of harmonisation through horizontal legislation. In the second phase preceded by the "White Paper on Food Safety" of European Commission emphasis was on the high level of food safety in the area on the food law and not only on the development of a common market. The Regulation No 178, well known as General Food Law adopted in 2002, followed changes in the policy. The Food Act in Republic of Croatia based on the General Food Law entered into force only one year later.

Key words

European Union, vertical legislation, horizontal legislation, General Food Law

Ministry of Agriculture, Forestry and Water Management
Ul. grada Vukovara 78, Zagreb, Croatia
✉ e-mail: jcacic@mps.hr

Received: October 26, 2006 | Accepted: January 11, 2007

Introduction

The European Economic Community was created in 1957 when the six countries signed the Treaty of Rome. Its original goals have been to create a common market (common market was set as an objective in 1958) and the internal market (set as an objective in 1986).

The common market and the customs union were fundamental for creating the EEC. The customs union meant the abolition of customs duties and customs borders between the Member States. The idea was to create one external border for entry of the goods from the other countries outside the EEC. The Member States had 12 years to abolish the customs borders separating them. The EEC Treaty ordered the removal of all customs duties and all measures with an effect equivalent to that of a customs duty.

Although all Member States agreed generally about the free common market, in practice each of the states has been looking for and finding different ways for protection of its own markets. So they have created a group of measures on customs borders called quantitative restrictions. The quantitative restrictions did not apply as a strait limitation of a quantity but they had the same results.

The common market is essential for integration process, too. It means four freedoms: the free movement of labour, the free movement of services, the free movement of capital and the free movement of goods. The common market gives possibility for free movement of goods on the whole territory of the EU, once the goods have been legally put on the market in any Member States. The free movement of goods has been the most important segment for developing the food law.

Food Law development

The production and consumption of food is central to any society and has very strong economic implications. In the European Union the agro-food sector has major importance on the economy. In fact, the food and drink industry is a leading industrial sector in the EU with an annual production worth almost 600 billion EUR, or about 15% of total manufacturing output. The EU is the world's largest producer of food and drink products. The agricultural sector has an annual production of about 220 billion EUR. Exports of agricultural and food and drink products are worth about 50 billion EUR a year (Commission of the European Communities, 2000).

The main objectives of EU food law system are: to ensure availability of supply, to increase productivity, to stabilize markets, reasonable prices and fair standard of living for farmers.

According to Meulen and Velde (2006), the European food law development can be divided into two main phases: the first phase that was oriented on the market and the second phase with orientation on food safety and the market.

There are two periods during the first, market oriented phase: the period of harmonisation through vertical legislation and the period of harmonisation through horizontal legislation.

The period of harmonisation through vertical legislation (known as recipe or compositional standards legislation) emphasised the quality of food products. In order to specify such standards directives were issued on the composition of certain specific food products (e.g. sugar, honey, fruit juices, milk, spreadable fats, jams, jellies, marmalade, chestnut puree, coffee, natural mineral waters, minced meat, chocolate, eggs, fish).

Speaking of the common market and the vertical legislation, it is very important to have in mind present Article 28 of the EC Treaty (at that time it was Article 30). This article is a key provision for the free movement of goods because it prohibits quantitative restrictions on imports and all measure that have equivalent effect.

There are three important cases showing how the Member States, in spite of their desirability of a free market, have tried to protect their own market.

First is an example of a technical barrier to trade. Namely, Belgian law prescribed that butter being sold by retailers to consumers had to be packed as a cube. The reason for this requirement was to prevent confusion of the consumer between butter and margarine. Practically, if the producer wanted to export butter to Belgium, they would have to pack it in a cube form. This meant extra costs in machinery and higher costs of production. On the other hand, because of Belgian Cubic Butter Law and penalty, no Belgium retailer would import butter in rectangular blocs. Consequently, Belgium territory would be effectively closed for such goods and, although it was not the quantitative import restriction, the effect of such measure was equivalent to the quantitative import restriction. Court of Justice of the European Communities ruled that the law demanding cubic butter was a technical barrier to trade and the Belgian law can not be applied to imports from other Member States (Walter Rau v. De Smedt Case 261/81 1982 ECR 3961). So in this case the Belgians would get the luxury of having both cubical and rectangular butter.

Dassonville and Cassis de Dijon

The second example of "measures having equivalent effect" to a quantitative restriction on imports is the Dassonville-case that took place in 1974. It was about import of Scotch whisky into Belgium where a certificate

of origin as accompanying document was required by the law. As Scotch whisky was bought in France in order to be reimported into Belgium (it was cheaper there because Scottish exporters had been trying to penetrate into the French market with low prices) it could not obtain British certificates of origin in France. So Mr. Dassonville created his own certificate and was charged with fraud. In this case the EC Court of Justice in Luxemburg found that the Belgian law could not be applied as it constituted a restriction on trade. The Court held «that all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions» and are therefore prohibited (Judgement of the Court of Justice, Dassonville, Case 8/74).

In 1979 the European Court of Justice (EC Court of Justice 20 February 1979, Case 120/78 Cassis de Dijon) struck down a German prohibition on imports from other Member States. According to the German national law it was not possible to import alcoholic beverages that did not meet minimum alcohol content requirements. Cassis de Dijon, a French liqueur produced from black currants contains 20% of alcohol and by German national law such liqueurs should contain at least 25% alcohol. A German chain of supermarkets Rewe brought suit charging that German regulation on minimum alcohol contents was an illegal non-tariff barrier. The German government argued the validity of its regulation primarily on health grounds claiming that alcoholic beverages with low alcohol content could induce young people to develop tolerances for alcohol more quickly than beverages with higher alcohol content. Germany also offered a consumer protection justification claiming there was a need to protect consumers from unfair producer and distributor practices. At the end, Germany submitted that in the absence of such a law, beverages with low alcohol content would benefit from unfair competitive advantage because taxes on alcohol are high, and beverages with lower alcoholic content would be saleable at lower prices than products produced in Germany according to German law. The European Court of Justice ruled that, because Cassis de Dijon met French standards, it could not be kept out of the German market. European Court rejected the German health argument as unconvincing and the Court suggested that a risk of consumers feeling cheated by lower than expected alcohol content could be eliminated by displaying the alcohol content on the label.

This case is very important because the Court introduced a general rule called the principle of mutual recognition. This principle enables products that have been lawfully produced and marketed in one of the Member States may not be kept out of other Member States if they do not comply with the national rules.

The European Union's policy of mutual recognition is one of the organization's most significant and essential laws in the progress of instituting free trade among the member states. Mutual recognition ensures that reasonable national regulatory standards will be respected by other member states as their own laws. That enables all goods to compete equally throughout the EU countries and their markets. The Cassis de Dijon and mutual recognition concept enabled the EU to improve the harmonization of free trade policies and allowed greater economic integration. This concept continues to influence the standards for which products are subjected to in foreign countries. It signalled a giant step forwards in European food law and marked a significant change in the perception of the benefits of harmonisation. Cassis de Dijon shifted vertical legislation to horizontal one, meaning general rules for all foodstuffs, or at least for as many as possible.

White Paper on Food Safety

The market-oriented food law based on mutual recognition continued until the later half of the 1990s characterized by the BSE-crisis. When the crisis became public, the European Union prohibited British beef exports and Britain answered by adoption of a non-co-operation policy with the European institutions. Public awareness of the epidemic presented a major challenge to European co-operation in the area of food safety. The European Parliament formed Inquiry Committee and the Committee issued report on the BSE crisis. In this report the EU Commission was accused of putting industry interests ahead of public health and consumer safety and this report gave recommendations for improvements to the structure of European food law.

In the 1997 the Commission published a Green Paper on the general principles of food law in the European Union. Consumer protection was made the first and foremost priority.

The essential role of the Internal Market is offering a wide range of safe and high quality products coming from all Member States. The food production chain is becoming increasingly complex and every link in the chain has to be as strong as the others if the health of consumers is priority. An effective food safety policy must recognise the nature of food production. Because of that a comprehensive and integrated approach to food safety is demanded. This does not mean that the EU should be responsible for all aspects of food safety but all aspects of food safety are addressed at EU level. EU legislation should be applied in all Member States in an efficient way and responsibility for enforcement should remain primarily a national, regional and local responsibility. Of course, each Member

States has a duty towards not only to its citizens but to all citizens of the EU and third countries for the food produced on their territory.

After BSE and some other crisis the European Union needs to re-establish public confidence in its food supply, its food science, its food law and its food control. The result of this demand is White Paper on Food Safety published by the Commission on 12, January 2000. The White Paper on Food Safety outlines a comprehensive range of actions needed to complement and modernise existing EU food legislation, to make it more coherent, understandable and flexible, to promote better enforcement of that legislation and to provide greater transparency to consumers. The White Paper is, in fact, a detailed Action Plan on food safety. It reflects a key policy priority for the Commission and key policy priorities are the highest standards of food safety. In the White Paper is proposed a radical new approach as a need to guarantee a high level of food safety. An independent European Food Authority is considered to be the most appropriate for ensuring a high level of food safety. It should deal with all aspects relating to food safety, operation of rapid alert systems, communication and dialogue with consumers on food safety and health issues as well as networking with national agencies and scientific bodies. The White Paper sets out over 80 separate actions that should be taken over next few years. One of the most important are: proposing a new legal framework, establishing appropriate official controls at both national and European level, establishing a high level of human health and consumer protection and ensuring ability to trace products through the whole food chain.

General Food Law

Only two years after the White Paper was published, the corner stone of new European food law was laid: Regulation 178/2002 known as the General Food Law.

The General Food Law is intended to introduce the overall, previously lacking, design in European food law. It lays down the general principles and requirements of food law, establishes the European Food Safety Authority and lays down procedures in matters of food safety. The General Food Law is the fundament to a general part of food law and provides a framework for both national and community food law in the European Union.

The General Food Law establishes the rights of consumers to safe food. It complements the Treaty requirements in relation to food and the Community's responsibilities to ensure a high level of human health protection in the definition and implementation of Community policies and activities.

The primary objective of food law is to ensure the effective functioning of the internal market and in this regard provide a protection of safety and consumer interests. Food law is based on an integrated approach from the farm to the final consumer, including measures applicable on the farm. In addition, requirements applicable to feed businesses are established. Food law pursues the general objectives of the protection of animal or plant health and life and the protection of the environment where this is compatible with the nature of the measure.

General Food Law establishes the European Food Safety Authority (EFSA) as an independent agency responsible for risk assessment. The EFSA has to cover all parts of the food chain and is intending to ensure that there is a functional separation of the scientific assessment of risk from risk management decisions. Through an Advisory Forum, the EFSA provides central co-ordination to the efforts and resources of the national food authorities and agencies in Europe.

Food Act in Croatia

The Food Act in Croatia was laid in July 2003. A revision of the food legislation in Croatia was required to harmonise food control with EU systems and to remove overlapping responsibilities in food inspection and its management. Food safety and quality controls in Croatia represented a combination of measures within a control model inherited from the former Yugoslavia. The legislative basis for food safety and quality was contained within the following laws: Veterinary Act, Act on Food Safety and Surveillance of Food Safety, Act on Standardisation, Act on State Inspectorate, Act on Livestock. Together these laws defined the organisations with responsibilities for regulation of food safety and quality, and the measures to be applied to ensure that food is safe and of an acceptable standard (the food control system).

According to the Report on food control in Croatia (2002), there were four problems that had to be solved in the food control system.

1. Responsibility for ensuring the safety of food was allocated to several organisations, variously involved with aspects of policy, legislation, management, inspection, sampling, laboratory testing and certification. All did their work with a high degree of professionalism and competence, but the arrangement was inefficient. Food safety was compromised by a lack of coordination and a waste of resources.
2. The control system required food to be sampled, tested and certified to prove that it meets food safety requirements. In an EU Member State, if mandatory certification of food product applied to food from other Member States, this would be a breach of the free trade provisions of the EU Treaty. Mandatory certification of end

products must shift on better inspection of the production processes.

3. Quality standards for all foods were mandatory, and subject to official certification by the State Inspectorate. In an EU Member State the application of mandatory quality standards and a requirement for certification, applied to food from other Member States are considered to be a breach of the free trade provisions of the EU treaty.
4. An extensive number of laboratories undertaked testing for food safety. However there was no policy regarding their role and they didn't receive state support. There was no overall direction or network to ensure that these laboratories perform with support of inspection services.

These four problems represented the most significant barriers to the adoption of the *acquis communautaire* in the area of food legislation in Croatia and the main reasons for developing the Food Act.

Work on drafting of the Food Act was started in 2002 and ended in July 2003 when it was adopted by the Croatian Parliament and published in the Official Gazette No. 117/03 and 130/03. After that it was amended in 2004 (OG 48/04) and in 2006 (OG 85/06). According to the Mission activity report (2006), this Act is partially aligned with the Regulation 178/2002/EC and other relevant EU regulations and directives. The Act regulates general principles and requirements relating to the hygiene and safety of food and feed, the obligations of food and feed business operators, general requirements relating to food quality, general requirements for obtaining the registration of geographical indications and designation of origin for the food and the traditional reputation of the food, general requirements relating to the declaration and labelling of food and feed, general requirements for placing food and feed on the market, for placing novel food and feed which contains GMOs on the market, the system of official control of food and feed, the system of authorised testing laboratories and reference laboratories, crisis and emergency management, establishment of the Croatian Food Agency, as well as the powers and responsibilities of the competent authorities regarding food and feed produced in the Republic of Croatia or imported and placed on the market of the Republic of Croatia.

Pursuant to the provisions of the Act, food safety is in the Republic of Croatia under the competence of the Ministry of Agriculture, Forestry and Water Management (MAFWM) and the Ministry of Health and Social Welfare (MHSW) and under the competence of the Croatian Food Agency (CFA). The competent ministries are responsible for drafting the acts and subordinate legislation and for the implementation of official controls. The competence of the Croatian Food Agency mainly relates to the field of risk assessment and risk communication.

The Food Act regulates in detail the competences through a food chain but, in general, the MAFWM is responsible for the official control of food of animal origin and animal feed, whereas the MHSW is competent for the official control of food of non-animal origin.

The Croatian Food Act appears as a comprehensive and complex law dealing with all the main items concerning food and feed safety and food quality. However, the following is not in compliance with EU principles on food safety included in Regulation 178/02:

— lack of a clear statement of the aim and scope of the Law,
— food control relays mostly on a "final product control" approach,
— the use of the precautionary principle in defining is not proper,
— an excessive weight is given to analytical control approach,
— there is no clear separation between risk assessment and risk management,
— general lack of integration in food and feed control policy and of a "from farm to table" approach.

By the adoption of the Food Act, the Republic of Croatia has made one huge step forward in the process of the accession to the EU. However, by the Food Act entering into force, Croatia opened a new chapter in the area of food safety and quality that has to be further harmonized with the EU *acquis communautaire*.

Conclusions

The history of European food law has resulted in a broad range of heterogeneous legislative measures. Development of European food law was driven by incident rather then by planning.

After a few serious crises a radical new approach is proposed as a need to guarantee a high level of food safety.

The General Food Law provides the general principles and the most important is a duty of care for food safety resting on food business operators. They have to address the legal limits to their liberty in the choice of raw material, their obligations in organising their production process and trade relations and the rules concerning their communication with consumers.

It is essential, regarding the future enlargement of the European Union that the candidate countries have to implement the basic principles of the Treaty, food safety legislation and control systems equivalent to those in place within the EU.

By the adoption of the Food Act Croatia opened a new chapter in the area of food safety and quality that has to be further harmonized with the EU *acquis communautaire* (the regulations from new "Hygiene Package", 2004).

References

Commission of the European Communities (2000) Regulation of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Authority, and laying down procedures in matters of food – proposal, COM 716 final, Brussels.

EC Court of Justice 20 February 1979, Case 120/78 (Cassis de Dijon), ECR 1974, page 837

Food Act of Republic Croatia (Official Gazette of Republic Croatia 117/03, 130/03, 48/04, 85/06),

Ministry of Agriculture and Forestry - World Bank Farmer Support Services Project (2002) „Assistance in preparing for EU integration: Food Quality Study", Report on food control in Croatia,

Ministry of Agriculture, Forestry and Water Management - CARDS 2002 project "Strengthening capacity in the area of agriculture, live animals and foodstuffs", (2006) Mission activity report

Meulen van der B., Velde van der M. (2006) Food safety law in the European Union, Wageningen Academic Publishers, Wageningen

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 (OJ L31, 1.2.2002, page 1),

Report of the Temporary Committee of Inguiry into BSE, set up by the Parliament in July 1996, on the alleged contraventions or maladministration in the implementation of Community law in relation to BSE, without prejudice to the jurisdiction of the Community and the national courts of 7 February 1997

Walter Rau v. De Smedt Case 261/81 1982 ECR 3961

Commission of European Communities (2000) White Paper on the Food Safety, COM 719 final, Brussels

http:// www.europa.eu.int/index_en.htm - Food Safety

http://www.ena.lu/europe/european-unio/judgement-court-justice-dassonville-case-1974.htm, Judgement of the Court of Justice, Dassonville, Case 8/74 (11 July 1974)

http://www.american.edu/TED/cremecassis.htm, Katy Littlefield (2004), Creme de Cassis

http://www.foodlaw.rdg.ac.uk/eu/eu-docs.htm, The "Hygiene Package" (2004)

acs72_63