



Food Online

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Overview

Materials

- 1) Consumer rights directive
 - i. Obligations of businesses
 - ii. Rights of consumers
- 2) Food Information Regulation
- 3) Product liability directive
- 4) Discussion, speculation, questions



Materials

- Directive 2011/83/EU (the Consumer Rights Directive)
- Regulation (EU) No. 1169/2011 (the Food Information for Consumers Regulation)
- Directive 85/374/EEC (product liability)
- Lomme van der Veer, Food Online: Reconnaissance into a consumer protection no-man's land between food law and the civil code, chapter 14 in B.M.J. van der Meulen (ed.), Private food law
<http://www.wageningenacademic.com/eifl>



Where the market leads
The law will follow



Development in the Netherlands

- Increase in:
 - Supermarkets where you also can order online that deliver at home
 - Other web-shops where you (only) can order online that deliver via transport services
- New
 - Platforms (bol.com; amazon) include food products
 - Trans-border trade



Consumer Rights Directive

- ⦿ Includes distance contracts (concluded without simultaneous physical presence of consumer and trader, via distance communication tools)
- ⦿ Trader is professional
 - How much activity is required to be considered professional?
- ⦿ Can act via general platform



Obligations of the web-shop

⦿ Before consumer buys:

- Provide information on Trader:
 - Identity (name)
 - Geographical address
 - Phone number / Email
 - Identity of trader for whom you are acting
 - Geographical address, Email etc. (if different)
- Provide information on Product:
 - Main characteristics
- Provide information on all-in price
- Provide information on consumers' rights



Rights of consumers

- ⊙ Withdrawal (14 days)
 - I.e. send back, get money back
 - Except for products highly perishable or with limited shelf-life

- General contract law
 - Conformity requirements
 - Non-conformity → right to terminate contract

- How to get the money back?
 - Payment occurs via online bank
 - Payment can be reversed by bank



Food Information to Consumers Regulation

- Mandatory food information has to be available prior to the purchase
 - i.e. all labelling information must be on the website!
 - Exception, durability date
 - Exception, non-prepackaged food (fresh); only allergens



Internet; Art. 14 distance selling

1. Without prejudice to the information requirements laid down in Article 9, in the case of prepacked foods offered for sale by means of distance communication:
 - (a) **mandatory food information, except** the particulars provided in point (f - **durability**) of Article 9(1), **shall be available before the purchase** is concluded and shall appear on the material supporting the distance selling or be provided through other appropriate means clearly identified by the food business operator. When other appropriate means are used, the mandatory food information shall be provided without the food business operator charging consumers supplementary costs;
 - (b) **all** mandatory particulars shall be available **at the moment of delivery**.
2. In the case of non-prepacked foods offered for sale by means of distance communication, the particulars required under Article 44 shall be made available in accordance with paragraph 1 of this Article. (**Allergens**)



Consumer rights directive + FIC

- CRD

- Information on main characteristics of product
- Right to withdraw
- Except for perishable products

- FIC

- Full information



Product liability directive

- ⦿ Producer is liable for damage caused by de defective product
- ⦿ Producer, is manufacturer of a part (ingredient), of the finished product, every business attaching its name to the product and the **importer** into the EU
- ⦿ Distributor is only producer if they fail to identify the producer
- ⦿ Web-shop can be importer into the EU
 - Even if located outside the EU?
 - Also the platform?



Product liability directive

- Damage: damage to life, health or personal property
 - Defective: not providing the safety one is entitled to expect.
 - Producers are liable jointly and severally
 - Product includes agricultural products and food
-
- Who ultimately bears the costs, depends on the contracts between the businesses



Those who want to sell food via the web can be sure that all the arrows from above and from below are aimed at them.

Lomme van der Veer



Issues

● Enforcement

- How to control?
- Who to sanction?

● FBO

- Includes the web-shop
- Includes the professional trader
- When does the small scaler become trader?
- Is the platform FBO?

● Novel foods / GMOs

- How much protection do authorisation requirements provide when you can order anything online?

● Consumer information

- What is the language of the global market?
- What is the need to know?

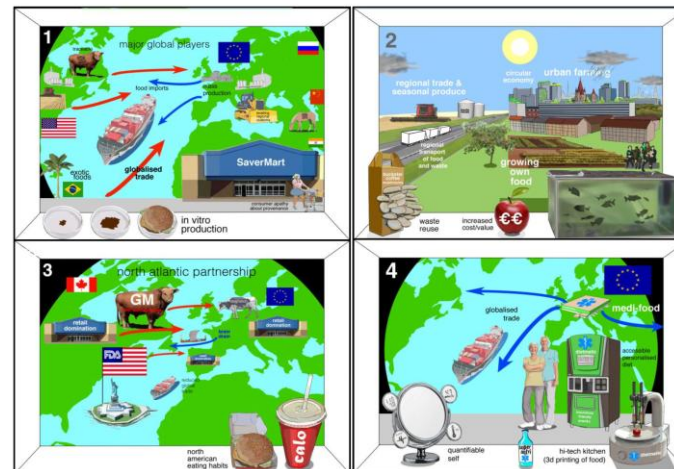


Fig. 1. The four foresight study scenarios



The way forward!

Filling the regulatory void through private regulation. If it solves the problem, it may preempt government action.



Governments' concerns

- Protection of the market against unsafe food
- Protection of consumer rights against unfair trade practices
- Protection of consumers' right to know
- Loss of control



Elements for private online schemes

● Initiative: platform

● **Requirements on Trader**

- Be certified against GFSI recognised food safety scheme
- For small traders, provide own audit & certification scheme
- Provide all info requested by platform or government

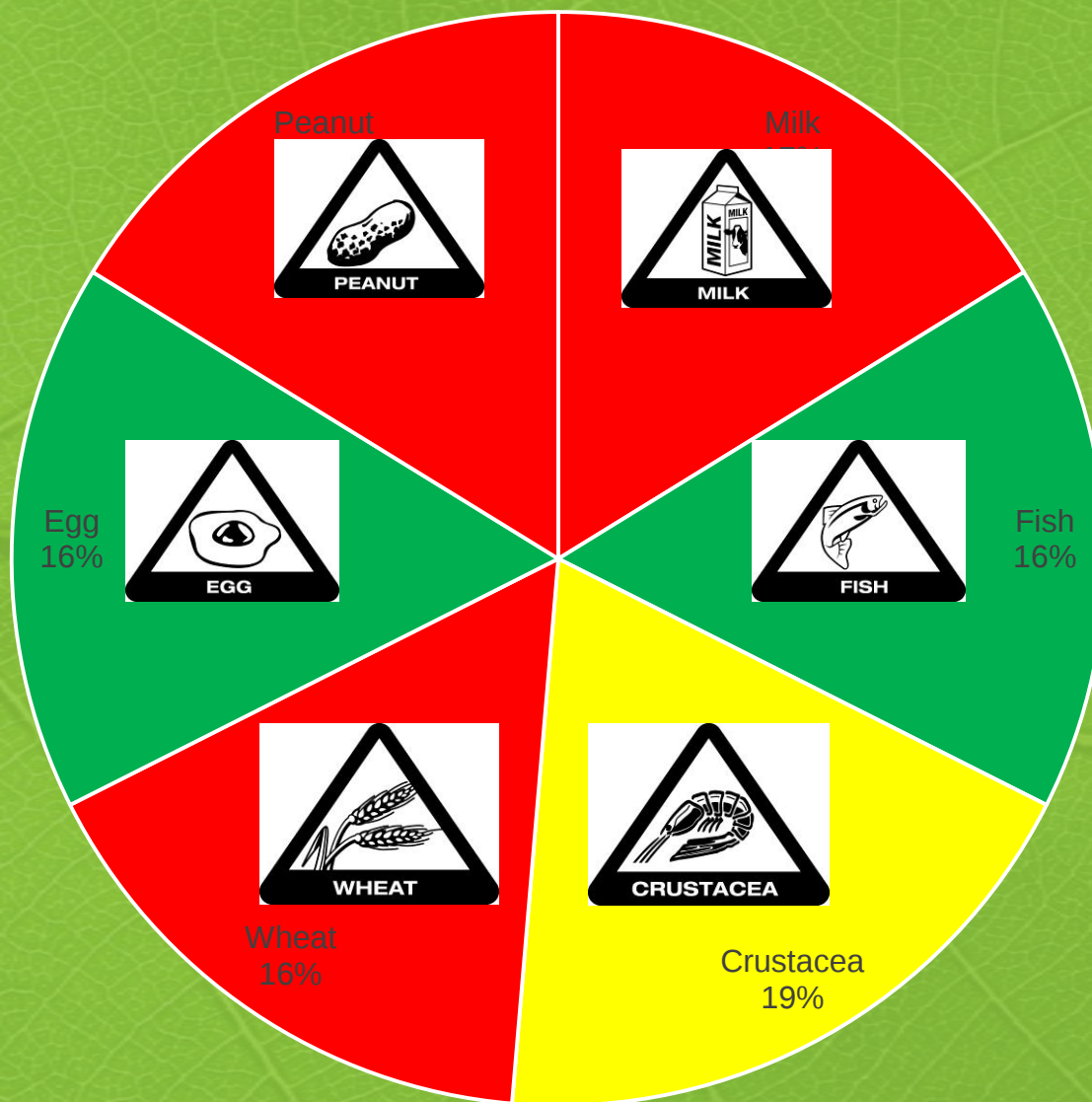
● **Requirements on Trader**

- Ensure adequate (food safe) transport
- Provide insurance against damages suffered by consumer or platform

● **Rights for consumers**

- Fair information
- Fair complaints procedure
- Swift financial compensation for damages

Allergens



■ Milk ■ Fish ■ Crustacea ■ Wheat ■ Egg ■ Peanut



Conclusion

- New market shapes
- Put all discussed topics into another light
- Make it impossible for governments to control
 - Must rethink authorisation / enforcement
- Make WTO irrelevant
- Make private regulation the new international law

Many thanks!
Any questions?

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