

EU Food Law

Development, history, system, principles

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European Institute for Food Law

Ladislav Miko – deputy DG SANTE to
Renmin students: let us focus on our
common goals not technical differences;
let us focus on the shortcomings in our
own systems so that we can improve them



Overview

■ Development

- Part 1. Europe / 3 phases / Crises / White Paper
- Part 2. How to analyse?
- Part 3. General Food Law



Recommended Materials



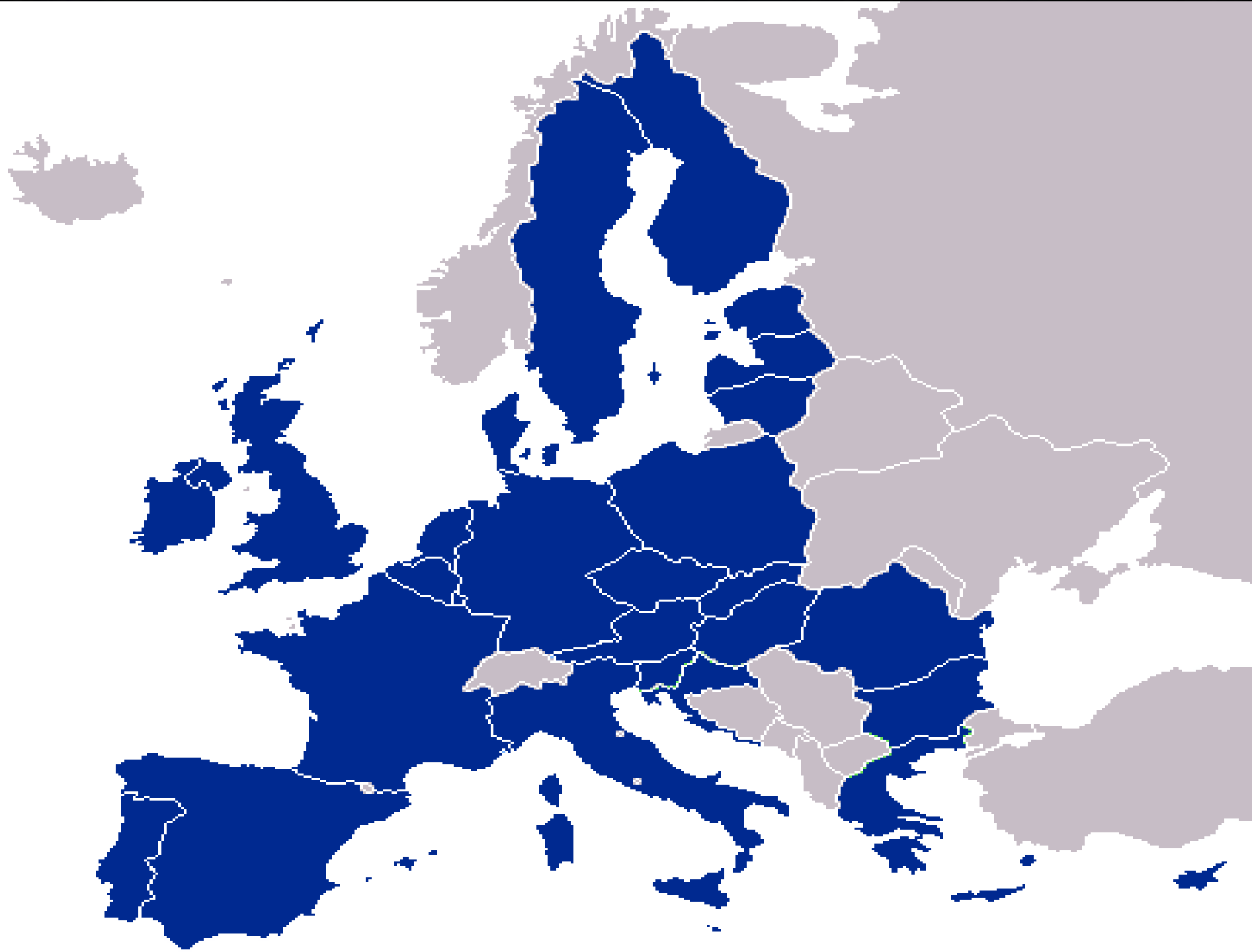
- Regulation 178/2002: the General Food Law
- Bernd van der Meulen, The Structure of European Food Law <http://www.mdpi.com/2075-471X/2/2/69>



Part 1

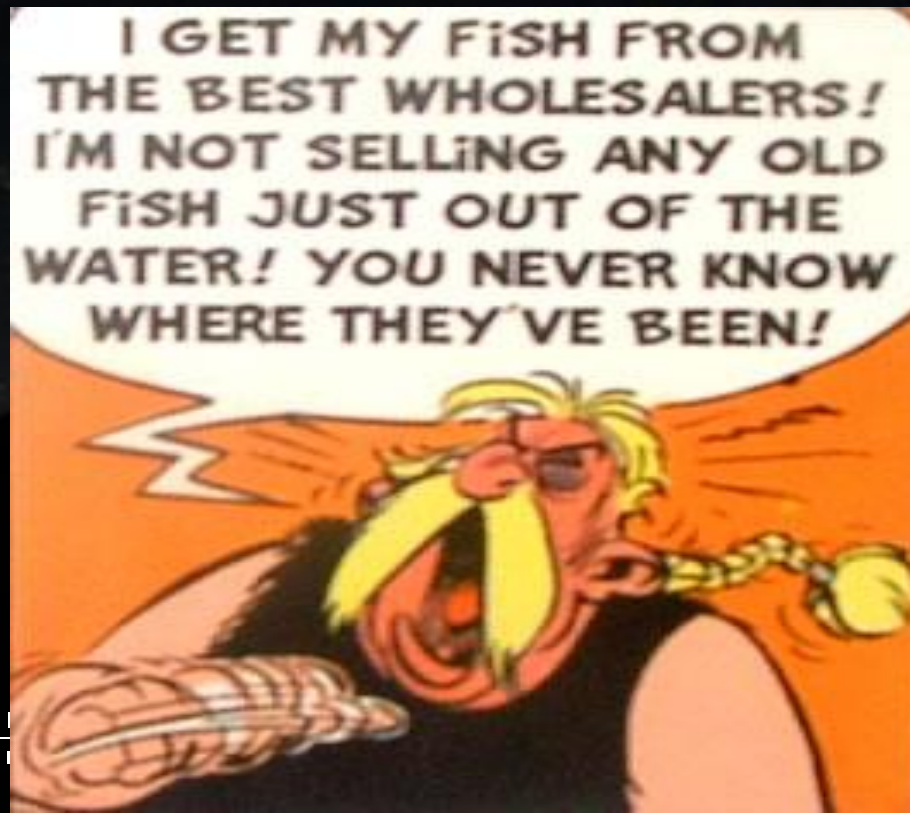
- Development of EU food law



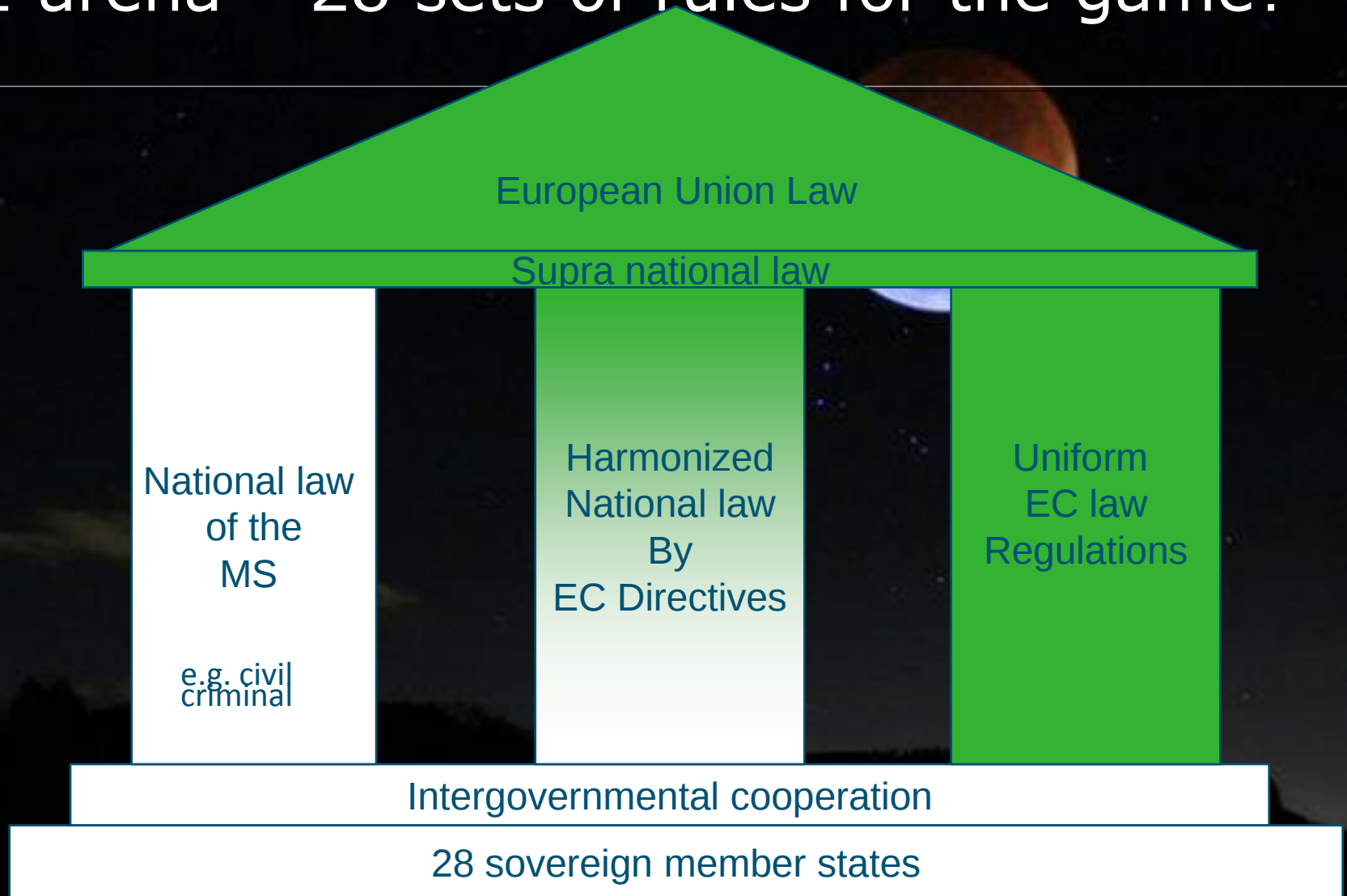


28 states – one market

- What are the barriers to a common market?
- How does one create a market?
- What are threats to a common market?



1 arena – 28 sets of rules for the game?



Development of EU food legislation

- 1960s – 1990s
 - First phase until end 1970s
 - Second phase 1980s – 1990s
- First priority: MARKET
- After 1990s
 - Third phase
- First priority: SAFETY

Problem

How do you create
one single market

6 states

6 different sets of
legislation

6 different definitions
of bread.....

Why define food in
the law?



European Food Law 1st phase

- Aim:
 - Internal market
- Means:
 - Harmonisation: turn 6 different sets into 6 similar sets
 - Vertical directives
- Problems
 - Unanimity rule
 - Quantity of products
 - Protectionism



Rewe:
in 1979

Rewe versus Germany

on ...



**Cassis de Dijon
a French liqueur
with 20% alcohol,
conform to French
legislation,
but,
lower than
minimum
allowed by German
law: 25%**



Mutual recognition

Differences in the national legal systems

- Foreign standards should be accepted as equal
- Limited exceptions
- Problem: downward tendency in standards



The consumer in European Food Law

- Reasonably intelligent and attentive
- Responsible
- Capable of making informed choices



Consequences of mutual recognition

- **ECJ 12-03-1987: Reinheitsgebot**
 - **1981: Ban on rice, maize and additives in beer**
- **ECJ 05-05-1996: Brasserie du Pecheur**
- **Member States can be held liable for damages caused by illegal legislation**

Harvest from 1st phase of development

- Principle of mutual recognition
 - (and some verticals)
- State liability



European Food Law 2nd phase

- Upgrading quality of national standards
- Horizontal directives
 - Regulates 1 or 2 common aspects of as many different products as possible
 - Examples:
 - Directive 2000/13/EC on Labelling
 - Framework Directive 89/107 on food additives



EU Crises 1990s



■ International Mor
recently

■ China

- Melamine

■ USA

- Spinach

- Peanut butter

- Etc.

■ BSE

■ Dioxin

■ Palm oil

■ MPA

■ FMD

■ Etc.

Political Crisis



European Food Law 3rd phase

- **Creating full swing food safety law**
- **Horizontal regulations**



Reconstruction of European Food Law

- 1997 Medina Ortega report
- 1997 Green paper
- 2000 White paper
- 84 Legislative initiatives
- 2002 General Food Law
 - 2003: GMOs
 - 2004: Food and feed safety controls
 - 2004: Hygiene / HACCP
 - 2005: Allergen labelling
 - 2006: Nutrition and health claims
 - 2007: policy on nutrition and obesity
 - 2008: additives, flavourings, enzymes
 - 2011: labelling
 - 2015: Novel Foods
 - Pipeline: official controls

ANNEX
Action Plan on Food Safety³

No	Action	Objective	REF. N° WP	Adoption by Commission	Adoption by Council/ Parliament
I. Priority measures					
1.	Proposal for setting up a European Food Authority	To set up an independent European Food Authority.	29	September 2000	December 2001
2.	Proposal for laying down procedures in matters of food safety	To introduce a comprehensive safeguard measure covering the whole food chain, including feed. To establish a comprehensive Rapid Alert System covering all feed and food emergencies with harmonised requirements and procedures, including third countries on the basis of reciprocity.	80 18	September 2000	December 2001
3.	Proposal for a General Food Law Directive	To establish food safety as the primary objective of EU food law. To lay down the common principles underlying food legislation (in particular: scientific basis, responsibility of producers and suppliers, traceability along the food chain, efficient controls and effective enforcement).	67	September 2000	December 2001

³ This action plan does not include all of the on-going actions resulting from the obligations in EU legislation.

17.157
official
documents

EuroVoc thesaurus

[Filter](#)

- ▶(56) AGRICULTURE, FORESTRY AND FISHERIES
- ▼(60) AGRI-FOODSTUFFS
 - ▶(6006) plant product
 - ▶(6011) animal product
 - ▶(6016) processed agricultural produce
 - ▶(6021) beverages and sugar
 - ▼(6026) foodstuff
 - ▶☒ processed foodstuff
 - ▶☒ foodstuff
 - ▶☒ processed food product
 - ▶(6031) agri-foodstuffs
 - ▶(6036) food technology
- ▶(64) PRODUCTION, TECHNOLOGY AND RESEARCH

Search criteria

Domain: All, Subdomain: All documents, Eurovoc descriptor Tt: foodstuff, processed foodstuff, processed food product, EUROVOC descriptor: confectionery product, condiment, fresh product, cereal flakes, concentrated product, cereal product, freeze-dried product, molasses, irradiated product, frozen product, organic product, prepared foodstuff, food supplement, pasta, perishable goods, gelatine, food substitute, mother's milk, fish product, sugar product, bread, fruit product, vegetable product, refrigerated product, reconstituted product, dietary product, salted product, malt, desiccated product, cereal flour, baby food, meat product, smoked product, syrup, groat, deep-frozen product, preserved product, dried product, starch, instant product, meal, egg product, Search language: English

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■ <http://eur-lex.europa.eu/advanced-search-form.html>

Part 3

- How to make sense of the current situation?



How to study and teach food law?

- So many trees, but can you see the forest?
- Many people applying food law are not lawyers
- Food law is largely based on natural science
- Objective: not to *know* food law, but
- To *understand* food law
- → provide structure, tools and confidence



European Food Law

Powers for public Authorities

Requirements for food Businesses

Principles and concepts

- Risk analysis
- Precaution
- Transparency
- Food
- Food business
- Food law

Executive tasks

- Scientific risk assessment (EFSA)
- Implementing measures (EC/MS)
- Decisions (EC/MS)
- Information and risk communication (EFSA/EC/MS)

Enforcement

- Official controls (MS)
- Sanctions
 - Administrative (injunctions, fines) (MS)
 - Criminal (fines, prison) (MS)
- EU second line inspections on MS enforcement (FVO)

Emergency and Incident management

- Communication (RASFF)
- National measures (impose recall) (MS)
- Emergency measures (EC)

Product

- Product standards
 - Agriculture quality
 - Verticals
- Authorisation requirements
 - Food supplements
 - Food additives
 - GMOs
 - Novel foods
- Food safety limits
 - Microbiological criteria
 - MRLs (pesticides; veterinary drugs)
 - Contaminants

Process

- Producer
 - Premises
- Production
 - Hygiene
- Trade
 - Traceability
- Incidents
 - Withdrawal
 - Recall

Presentation

- Labelling
- Advertisement
- Risk communication

Interests of Consumers

Regulatory requirements on food

■ Principles

■ Legislation on procedures

- Official controls
- Incident management
- Rapid alert system

■ Legislation on the product

- Compositional standards
- Pre-market approval
- Banned substances
- Food safety targets (MRLs)

■ Legislation on the process

- HACCP
- Traceability
- Withdrawal & recall

■ Legislation on Presentation

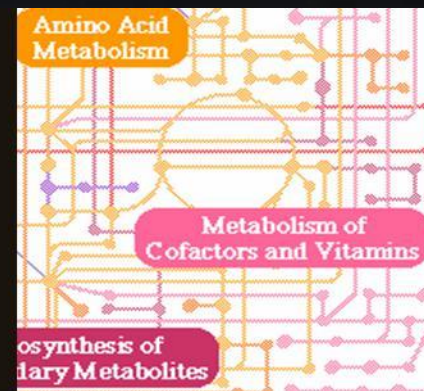
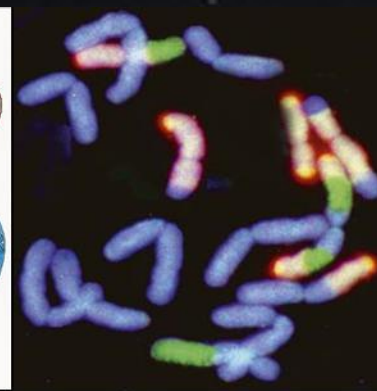
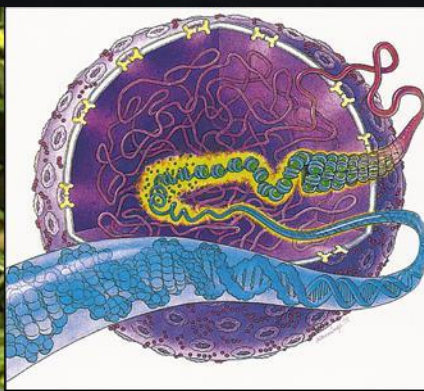
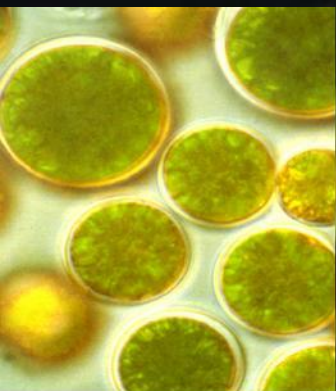
- Labelling
- Allergens
- Nutrition and health claims

The current course is based on this design

- 1) EU in general
- 2) Development
 - 2) continued: General principles
 - 3) Enforcement
 - 4) Authorisation
 - 5) Processes, hygiene
 - 6) Consumer information
- 7) International
- 8) Private standards

Part 2

- General principles of modern EU food safety law



2000

- **White paper on Food Safety**
- **How are you going to protect us?**
 - **By taking matters in hand →**
 - **Command & control**
 - **Centralisation**
- **Whom can we trust?**
 - **Science!**

White Paper initiatives

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The General Food Law (GFL)

1.2.2002

EN

Official Journal of the European Communities

L 31/1

I

(Acts whose publication is obligatory)

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Articles 37, 95, 133 and Article
152(4)(b) thereof,

the Member States. When Member States adopt meas-
ures governing food, these differences may impede the
free movement of food, create unequal conditions of
competition, and may thereby directly affect the func-
tioning of the internal market.

General Food Law

- Concepts
 - Food
 - Risk analysis
- EFSA
- Principles
- Procedures for food safety issues
 - RASFF
 - Emergency measures



GFL: Objectives of food law



- Protect human life and health
- Protect (other) consumers' interests
 - Taking into account: animal health and welfare, environment
 - Achieve free movement of food



GFL Scope: holistic



- All stages of production, processing and distribution of food and feed (including feed produced for or fed to food-producing animals)
- Entire food chain “from farm to fork”
- Not applicable to private domestic consumption



GFL definitions



- Food(stuff): any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans
- Not included: feed, live animals unless they are prepared for placing on the market for human consumption, plants prior to harvesting, medicines, cosmetics, tobacco, drugs, residues, contaminants



GFL institutional aspects EFSA

EFSA

- European Food Safety Authority
- Responsible for risk assessment (scientific evaluation of risks, safety evaluations, identification of emerging risks)
- Responsible for communication of scientific and technical information directly to the public
- Risk management by Commission, Council and EP

European Food Safety Authority

GFL principles (1) legislation

■ Aims

- Food law must aim at health protection & provide consumers basis to make informed choices

■ Science based

- Food law must be based on risk analysis, carried out independently, objectively and transparently and based on available scientific evidence

■ Precautionary principle

- for risk management in case of scientific uncertainty. Measures no more restricted than required, taking into account other legitimate factors



GFL principles (2) responsibility authorities

■ Transparency

- Public consultation for preparation, evaluation and revision of food law
- Public authorities must inform the general public of food or feed that is a risk to health

■ Enforcement

- Member States must enforce food law and have effective, proportionate and dissuasive measures & penalties

GFL principles (3) responsibility industry

■ Communication

- Labelling, advertising and presentation of foodstuffs shall not mislead consumers

■ Duty of care

- Unsafe food/feed shall not be placed on the market (injurious to health, unfit for human consumption)
- Food business operators must ensure that food complies with relevant food law provisions



Article 14 GFL

Article 14

Food safety requirements

1. Food shall not be placed on the market if it is unsafe.
2. Food shall be deemed to be unsafe if it is considered to be:
 - (a) injurious to health;
 - (b) unfit for human consumption.
3. In determining whether any food is unsafe, regard shall be had:
 - (a) to the normal conditions of use of the food by the consumer and at each stage of production, processing and distribution, and
 - (b) to the information provided to the consumer, including information on the label, or other information generally available to the consumer concerning the avoidance of specific adverse health effects from a particular food or category of foods.

4. In determining whether any food is injurious to health, regard shall be had:

- (a) not only to the probable immediate and/or short-term and/or long-term effects of that food on the health of a person consuming it, but also on subsequent generations;
- (b) to the probable cumulative toxic effects;
- (c) to the particular health sensitivities of a specific category of consumers where the food is intended for that category of consumers.

5. In determining whether any food is unfit for human consumption, regard shall be had to whether the food is unacceptable for human consumption according to its intended use, for reasons of contamination, whether by extraneous matter or otherwise, or through putrefaction, deterioration or decay.

6. Where any food which is unsafe is part of a batch, lot or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment there is no evidence that the rest of the batch, lot or consignment is unsafe.

7. Food that complies with specific Community provisions governing food safety shall be deemed to be safe insofar as the aspects covered by the specific Community provisions are concerned.

8. Conformity of a food with specific provisions applicable to that food shall not bar the competent authorities from taking appropriate measures to impose restrictions on it being placed on the market or to require its withdrawal from the market where there are reasons to suspect that, despite such conformity, the food is unsafe.

9. Where there are no specific Community provisions, food shall be deemed to be safe when it conforms to the specific provisions of national food law of the Member State in whose territory the food is marketed, such provisions being drawn up and applied without prejudice to the Treaty, in particular Articles 28 and 30 thereof.



What makes a food unsafe / unacceptable?

- Its properties
 - Toxicity
- Its condition
 - Decay
 - Contamination
 - Pathogenic organism
 - Unwholesome substances
 - Radiation
 - Objects
- Its status?
 - Organic
 - Halal
 - Animal friendly



4 categories of food safety

Safety		Not-regulated	Regulated
Inherent properties		Art. 14 GFL: effect	Category: Additives, GMOs, novel foods
			Authorisation
Condition		Art. 14 GFL: effect	MRLs, shelf life

What can regulators do about it?

- Ban
- Require prior authorisation
 - Additives
 - GMOs
 - Novel foods
- Set limits
 - Contaminants
 - Organisms
- Require procedures
 - Hygiene
 - HACCP



GFL principles (4) responsibility industry

■ Traceability

- Food business operators must have systems for traceability (1 step back and forwards)

■ Recall

- If operator markets product not in compliance with food safety requirements, s/he must initiate procedures to withdraw product + inform competent authorities (esp. when product is injurious to human health). If necessary, consumers must be informed



GFL principles (5) international trade

■ Exports

- Food exported from EU must comply with relevant food law requirements (never export of unsafe food)

■ Imports

- Food imported in EU must comply with relevant food law requirements or their equivalence



Reconciling food law to competitiveness

Report on the regulatory framework for the European Union



From agricultural to food law the new scenario

Regulating food law



Fed up with the right to food?

European Food Law
Internat



Governing food security

Law, politics and the right to food

EU Food Law Handbook



Private food law

Governing food chains through contract law, self-regulation, private standards, audits and certification schemes



The enforceability of the human right to adequate food

A comparative study



European Institute for food law series:
<http://www.wageningenacademic.com/eifl>

edited by:
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Thank you for your kind attention

Q&A

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