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**THE GENERAL PRINCIPLES OF FOOD LAW  
IN THE EUROPEAN UNION**

**Commission Green Paper**

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## Executive Summary

### General Background

1. Food law is a matter of great public concern. A high level of security and effective public control is necessary to ensure that the food supply is safe and wholesome and to ensure the effective protection of the other interests of consumers.
2. With every household spending on average about 20% of its disposable income on food and drink, the sector is of vital importance to the European economy. The food and drink processing industries alone employ some 2.3 million people, and in 1996 consumption within the Community will reach about ECU 500,000 million.
3. The volume of Community legislation relating to foodstuffs has grown substantially, in particular as a result of the Internal market programme and the progressive implementation of the Common Agricultural Policy. Today, the vast majority of national food legislation has been harmonized at Community level. Even in areas which have not been harmonized, the application of the general Treaty rules, in particular Articles 30-36, provides a basis for the free movement of foodstuffs.
4. The new approach of the Commission on scientific advice and control, as laid down in the Communication on Consumer Health and Food Safety, which has followed the decision on the separation of responsibilities for the management of scientific committees, and for control activities from the responsibilities of the legislative departments, is not considered in this Green Paper, as it is mainly concerned with the substantive rules of Community law applicable to the foodstuffs sector. The Commission, as described in the above-mentioned Communication, has taken measures to raise the performance of its control services and to strive for their excellence by ensuring their independence, transparency and effectiveness.

### The aims of the Green Paper

1. to examine the extent to which the legislation is meeting the needs and expectations of consumers, producers, manufacturers and traders.
2. to consider how the measures to reinforce the independence and objectivity, equivalence and effectiveness of the official control and inspection systems are meeting their basic objectives to ensure a safe and wholesome food supply and the protection of other interests of consumers.
3. to launch a public debate on our food legislation, and thereby,
4. to enable the Commission to propose appropriate measures for the future development of Community food law, where necessary.

**As a starting point for discussion, the Green Paper identifies six basic goals for Community food law:**

1. to ensure a high level of protection of public health, safety and the consumer;
2. to ensure the free movement of goods within the internal market;
3. to ensure that the legislation is primarily based on scientific evidence and risk assessment;
4. to ensure the competitiveness of European industry and enhance its export prospects;
5. to place the primary responsibility for safe food on industry, producers and suppliers, using hazard analysis and critical control points (HACCP) type systems, which must be backed up by effective official control and enforcement;
6. to ensure the legislation is coherent, rational and user friendly.

In order to achieve these goals, it is necessary to ensure that our regulatory approach covers the whole food chain "from the stable to the table". This gives rise to two issues:

1. the extent to which primary agricultural production and the processed foodstuffs sector should be brought within the same set of general rules;
2. the principle of producers' liability for defective products to be made obligatory for primary agricultural production (see Directive 85/374/EEC).

#### **Simplification and rationalisation of Community foodstuffs legislation**

1. Although desirable objectives, simplification and rationalisation cannot be allowed to result in a reduction in the level of protection of public health or consumer protection. Since 1985, the Commission has in general limited its internal market proposals in the foodstuffs sector to measures which are necessary for the protection of public health and of consumers.
2. It is important to ensure that the existing legislation strikes the right balance between general provisions and more detailed prescriptive legislation, between the use of binding legislation and recourse to voluntary instruments and between horizontal approaches and specific rules applicable to particular categories of foodstuffs.
3. The application of the principles of subsidiarity and legislative simplification in this area have produced mixed results. One particular problem has been the difficulty of ensuring that the practical application of the subsidiarity principle does not result in the progressive dismantling of the internal market as a result of new national legislative initiatives. In addition, the scope of Community legislation may need to be extended to cover certain areas where the internal market does not appear to be functioning effectively.

## Review of existing legislation

1. Extensive consultation of the social partners during the preparation of legislation is an important means of ensuring that the legislation meets its goals. The social partners could be encouraged to participate more actively in the evaluation of the costs and benefits of proposed new legislation.
2. Greater use of Regulations instead of Directives would increase the transparency of the legislation and avoid difficulties arising from delayed or incorrect transposition. The Directive, should however, remain the instrument of choice for framework legislation.
3. There are serious difficulties in adapting existing legislation to technical and scientific progress which would be reduced by the greater use of simplified procedures.
4. The existing definitions which are contained in a variety of legal instruments should be rationalised and completed by new definitions of foodstuffs and placing on the market.
5. In the field of hygiene, 11 vertical veterinary hygiene directives co-exist with a general directive on the hygiene of foodstuffs. The Commission has already begun work on the simplification of the vertical directives, but their relationship with the general directive must also be considered. Priority should be given to ensuring that there is a coherent and consistent body of Community hygiene rules. This can best be achieved by the generalised application of HACCP-type principles, and by limiting detailed prescriptive regulations to cases where they are considered essential. The desire for consistency must also be balanced by the need to maintain the necessary degree of flexibility in the design and implementation of food hygiene regulations in order to ensure a high level of protection without imposing an unnecessary burden on business.
6. In the field of quality, it does not appear that the differences of approach resulting from the different objectives of internal market and agricultural legislation give rise to problems of incoherence or inconsistency.
7. In the field of labelling, binding labelling rules should ensure that consumers are provided with essential information about the foodstuff in a user-friendly manner. It is necessary to strike a balance which ensures that consumers receive all useful information, whilst avoiding unnecessarily detailed provisions. Manufacturers should remain free to provide additional information provided it is not misleading., although in some cases, legislation may be necessary to govern the provision of this additional information. In this context, the Green paper specifically invites comments on the approach followed in Community legislation to claims and nutritional labelling.

## **Maintenance of a high level of protection**

1. The Treaty requires the Community to contribute to the maintenance of a high level of protection of public health, the environment and consumers. In order to ensure a high level of protection and coherence, protective measures should be based on risk assessment, taking into account all relevant risk factors, including technological aspects, the best available scientific evidence and the availability of inspection sampling and testing methods. Where a full risk assessment is not possible, measures should be based on the precautionary principle.
2. The importance of an independent source of advice which will command public respect is crucial. The independence and objectivity of scientific advice and scientific committees must be guaranteed at all levels. The Commission has taken steps to ensure central co-ordination of the number, scope, composition and activities of scientific committees so that a high level of competence and full consistency of its scientific advice is ensured and the necessary resources are provided. Every effort must be made to present scientific conclusions in a clear and cogent manner.
3. Scientific advice is of primary, but not exclusive, importance. Community legislation has on a number of occasions recognised that other factors, in particular consumer needs and concerns, must also be taken into consideration during the decision-making process.
4. The Community must have adequate means to take preventative action against serious and urgent public health risks. The Commission has a range of safeguard powers available, but it is important to verify that there are no gaps in the system. There may also be a need to improve communication to the public in the event of serious risks.
5. The Community has a variety of strategies available for the management and control of zoonoses (eradication, reduction, removal, treatment). The Commission invites comments on possible improvements to the arrangements for managing the risk of zoonoses.
6. The legislation should set out clearly the responsibilities of producers, processors, distributors and retailers to supply safe, wholesome food fit for human consumption, of specified quality and properly identified, as well as the responsibilities of the competent control authorities. It may be desirable to introduce general obligations on all economic operators to take all the steps necessary to ensure that only safe and wholesome food is placed on the market. Such obligations would be independent of consumer rights to redress in the framework of the Directive on liability for defective products.
7. The extension of the product liability directive to cover primary agricultural production should improve the overall level of protection of consumers, but should

not be considered as an alternative to appropriate product safety rules and effective official control systems.

8. Recent developments have highlighted consumer interest in food production methods. Community food legislation<sup>1</sup> does not require the labelling of production methods which do not have an impact on the food characteristics of the finished product. However, in certain cases, mandatory labelling schemes may be considered necessary, such as the recently adopted rules on the labelling of beef. Moreover, it may be necessary to consider an appropriate framework for voluntary labelling schemes designed to address this interest.

### **Ensuring the effective implementation of internal market rules**

1. Timely and correct implementation of Community legislation is essential for the effective operation of the internal market. Greater use should be made of Standing Committees to consider questions regarding the interpretation of Community legislation, and unforeseen difficulties which may arise during its implementation. Consideration should be given to the establishment of a forum in which representatives of the Commission, member States and interested parties could discuss general issues relating to the implementation of the legislation.
2. The primary role of the Community in the field of control is not to replace the Member States, but to verify that the necessary controls are being carried out in an effective and equivalent manner throughout the internal market. The legislation should provide for appropriate enforcement and control measures. Whilst aimed at achieving a high level of protection, control and enforcement measures should take into account the principle of proportionality and should also provide for the targeting of controls on activities presenting the greatest risk. Steps should be taken to reinforce administrative and scientific cooperation between Member States and with the Commission in order to ensure equivalence of enforcement throughout the Community and to ensure effective mechanisms to prevent the marketing of unsafe food and to trace the origins of, and factors contributing to, outbreaks of food-borne disease. The fifth Research Framework Programme also has a role to play in this respect. In order to reinforce consumer confidence, efforts have been made in the Communication on Consumer Health and Food Safety to improve the transparency of the control system at Community level, and the need for greater transparency at national level should also be considered.
3. The sanctions for infringement of Community internal market legislation should be equivalent to the sanctions set out in domestic legislation, effective, proportionate and dissuasive.

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<sup>1</sup> Directive 79/112/EEC on the labelling, presentation and advertising of foodstuffs  
Regulation (EC) n° 374/97 on novel foods and novel food ingredients



4. There are mechanisms for examining new draft national legislation, principally under Directive 83/189/EEC where it contains technical regulations; the Commission also ensures respect for the Community rules on foodstuffs by the investigation of complaints. The new procedure for mutual information on national measures derogating from the principle of free movement of goods is also expected to make an important contribution in this respect.

In non-harmonized areas, the primary instrument for the management of the internal market remains the principle of mutual recognition, which requires that a Member State should allow to circulate freely in its territory goods produced or marketed in conformity with the rules, tests or standards found in another Member State which offer an equivalent level of protection to its own rules, tests or standards.

#### **The External Dimension**

1. The Community is both a major importer and exporter of food. As an importer, the Community is obliged to ensure that imported foods meet the same high standards as have been laid down for Community production. As an exporter, the Community must be able to reassure governments and consumers in third countries that food produced within the Community may be safely marketed in their countries.
2. The legislation should be compatible with the international obligations of the Community, in particular those arising under the WTO agreements. Equally, the Community must work in close partnership with the Member States, producers and industry to ensure that our major trading partners are also respecting their obligations. The Community should be able to participate fully in international standardisation activities relating to the foodstuffs sector. Where possible, the Community should negotiate equivalence agreements or mutual recognition arrangements with major trading partners to ensure in all cases, a high level of protection of the consumer.

**PART I**  
**INTRODUCTION**

**1. General remarks**

Following more than 30 years of legislative activity, the great majority of national food law has been harmonized at Community level. Recent studies, in particular the study of the Impact and Effectiveness of the Internal market Programme on the Processed Foodstuffs Sector, have shown that the Community's legislative programme in the foodstuffs sector has had a generally positive impact, although some criticisms have been expressed of overly detailed legislation, fragmentation, difficulties of adapting the legislation to innovation, and problems in the day-to-day functioning of the internal market. In the light of certain recent events, in particular BSE, others have raised doubts about the capacity of the legislation to entirely fulfil its objectives to ensure a high level of protection of public health and consumer protection.

In contrast to legislation in most of the Member States, Community food law has developed piecemeal, over time, and there is no central unifying text setting out the fundamental principles of Community food law and clearly defining the obligations of those concerned. In recent years, there have been increasing calls for such a legislative framework, most notably from the European Parliament. In 1992, the Commission invited three eminent food law experts to consider the need for, and possible scope of, such a general directive. In May 1993, at the request of the Commission, the European University Institute of Florence organised a conference on this question bringing together the three experts and representatives from the Member States and the Commission, from agricultural, industrial and commercial interests, and from consumer groups.

The aim of this Green Paper is to:

- examine the extent to which the legislation is meeting the needs and expectations of consumers, producers, manufacturers and traders;
- consider how the measures to reinforce the independence and objectivity, equivalence and effectiveness of the official systems for the control and inspection of foodstuffs are fulfilling their objectives;
- invite a public debate on our food legislation to provide guidance to the Commission in its future legislative initiative on food, and accordingly;

- enable the Commission to propose measures allowing, wherever possible, to improve the protection of public health laid down in its measures for the internal market and the common agricultural policy, improve the coherence of Community food law, consolidate and simplify it, improve the operation of the internal market, and take into account the increasingly, important external dimension, notably the policies followed by our most advanced trading partners and the requirements of the WTO agreements.

The new approach of the Commission on scientific advice and control, as laid down in the Communication on Consumer Health and Food Safety, which has followed the decision on the separation of responsibilities for the management of scientific committees, and for control activities from the responsibilities of the legislative departments, is not considered in this Green Paper, as it is mainly concerned with the substantive rules of Community law applicable to the foodstuffs sector. The Commission, as described in the above-mentioned Communication, has taken measures to raise the performance of its control services and to strive for their excellence by ensuring their independence, transparency and effectiveness.

Before considering the policy options which are submitted for discussion, it is important to reaffirm the fundamental goals and achievements of EC food law, which should in no way be put into question. These are :

- the need to ensure a high level of protection of public health and safety, and of consumer protection;
- the need to ensure the free circulation of goods within the single market;
- the need for legislation to be based primarily on scientific evidence and risk assessment, in respect of our international obligations;
- the need to ensure the competitiveness of the European industry, allowing for flexible adaptation of the legislation to incorporate new technical developments as well as to enhance Community export prospects;
- the need to place the primary responsibility for safe food with industry, producers and suppliers, including imports from third countries, through self-checking provisions (so-called Hazard Analysis Critical Control Points systems or HACCP) backed up by official controls and appropriate enforcement;
- the need for legislation to be coherent, rational, consistent, simpler, user-friendly and developed in full consultation with all interested parties.

It is also necessary to stress that as the food chain becomes increasingly complex, with a growing number of interventions from primary producers through the agro-food industry to distributors and retailers, so it becomes essential to ensure that our regulatory approach covers all potential risks to the safety and wholesomeness of food, at all stages of the food chain, including factors arising upstream, from potentially hazardous inputs or environmental contaminants; factors arising during on farm production and factors arising during downstream manufacturing, processing distribution or storage.

For this reason, a further objective of this Green paper is to examine whether or to what extent processed foodstuffs and primary agricultural production can be brought within the scope of the general rules applicable to foodstuffs, despite their differences. Similarly, under the product liability Directive, it is left to Member States to determine whether to apply product liability to primary production. The extension of Community rules on product liability to all operators in the food chain, including primary producers is therefore also considered.

The Commission wishes to ensure that the consultation exercise covered by this Green Paper is as broad as possible. It therefore invites any other relevant comments and suggestions from interested parties. At the end of the consultation process the Commission will consider what changes may be necessary. These changes may consist of:

- a proposal for a general Directive on food law;
- consolidation and simplification of certain provisions, or reformulation of existing legislation;
- suggestions or proposals of a non-legislative nature, including changes in procedures or working methods.

Comments on this Green paper should be addressed before 31 July 1997 to.

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## 2. The economic context

Within the Community, every household spends on average about 20% of its disposable income on food and drink. It is estimated that in 1996 consumption of food and drink and tobacco within the Community will amount to about ECU 500,000 million, while production will amount to ECU 510,000 million. The Community is both a major importer and a major exporter of foodstuffs. In 1994 exports from the Community reached ECU 34,250 million, while imports into the Community were valued at ECU 24,480 million, leaving a favourable trade balance of ECU 9,770 million, an increase of over 50% when compared with 1992. In some food sectors, however, there is a negative trade balance. For example there is a deficit of fisheries products in the Community which amounted to ECU 6,172 million in 1994. Over 2.3 million people are employed by the food and drink industries, nearly 50% of them in enterprises with less than 100 employees. A further 10 million people are employed in primary agricultural production. The food and drink sector is thus clearly of major importance for the European economy as a whole.

Between 1984 and 1992 both production and consumption of food and drink within the EC grew at a constant real rate of about 2-2.5% a year. However, in 1992-93, this rate of growth slowed to below 1%. Much of this growth is achieved through higher added value, as, particularly in Northern Europe, consumers switch from fresh foodstuffs to "convenience" processed foods. The major producers have reacted to this long-term change by investing heavily in increasing their production capacity, in the modernisation of equipment and in new technology. Smaller producers, on the other hand are finding themselves under growing pressure, not only as a result of the changing pattern of foodstuffs demand, but also because of the major changes taking place in the retail distribution system, notably due to the increasing concentration in food distribution and the growing role of the supermarkets' "own-brand" products in the market place. As a result, many smaller producers face a choice of seeking a niche in a quality market or of becoming suppliers of "own-brand" products for supermarkets.

Across the Community as a whole, there are still substantial regional variations in the market for foodstuffs, particularly between the northern and the Mediterranean regions. In Southern Europe, consumption of fresh food remains relatively high and the proportion of value added by the food processing industry is thus significantly lower. Nevertheless, in all regions there has been considerable diversification of the type and range of products available, and this trend is likely to continue as manufacturers seek to use the rules of the internal market to obtain new outlets for their products.

Against this background, it appears clear that the Community has a major role to play by promoting a transparent and stable regulatory environment as the foundation for further development of this vital sector. In particular, the transparency and efficient operation of the internal market is of major importance for the survival of the large number of smaller and medium-sized companies which must increasingly compete with the giants of the multi-national agro-food industry.

### **3. Background to the development of Community activities in the foodstuffs sector**

The primary influences on the development of the Community's food law have resulted from the Common Agricultural Policy and the programme for the realisation of the internal market. There is also a distinct policy for fisheries and aquaculture, the Common Fisheries Policy.

For the future, the development of Community activities in this sector will also be strongly influenced by the new provisions added by the Maastricht Treaty concerning human health protection (Article 129), consumer protection (Article 129a), and the environment (Article 130r).

#### **3.1 The Common Agricultural Policy and foodstuffs legislation**

The common agricultural policy has had a significant impact on the development of food law within the Community. Measures taken to achieve the objectives of the CAP have inevitably also resulted in the development of legislation which affects the sale of foodstuffs of agricultural origin. Three points in particular may be noted:

1. One of the main features of the CAP has been the development of common organizations of the market for the major agricultural commodities, along with price support and intervention measures funded by the European Agricultural Guidance and Guarantee Fund (EAGGF). For these measures to operate effectively and to avoid fraud, it has been necessary in some cases to establish quality specifications to define those products eligible for support. In addition, as a market support measure, and sometimes in the absence of price support mechanisms, it has been considered necessary to lay down quality specifications for products. The nature and extent of these rules vary according to the common organization of the market concerned. In some cases the rules may have little impact on the marketing of the finished foodstuffs. In others, for example the common organization for wine, the rules constitute a comprehensive and self-contained marketing code.

