

The proposed regulations prescribe identification systems for each type of animal. A General Standards document gives details on data standards (official numbering systems for animals – individuals, groups, and flocks – or locations) and identification devices (eartags, tags used under NAIS, or other devices).⁹

The proposed traceability system will rely in part on existing animal disease regulations that prescribe devices or methods for identification and required documentation (usually a health certificate) for interstate movement. For example, under regulations to control scrapie in sheep and goats, animals moved in interstate commerce must be officially identified and accompanied by documentation. Swine, too, are subject to existing regulations for identification and documentation.¹⁰ USDA's proposal would significantly amend regulations to control brucellosis and tuberculosis.¹¹

Under the proposed regulations, states (and tribes) will administer the traceability program. They will develop their own traceability systems, with federal financial support, under the parameters of USDA regulations. States will own and maintain data for their jurisdictions. In addition, shipping and receiving states may decide to use alternate forms of identification and (in some instances) documentation.

To implement the traceability program, states must be able to carry out a timely trace investigation. The USDA does not prescribe traceability systems for states, but plans to enact performance standards in a future regulation.¹² Among other items, states must be able to provide information about official identification numbers, the producer who received the animal, and the address from which an animal was shipped.¹³

The USDA's proposed animal disease traceability program is not designed as a food safety program.¹⁴

Animals will be traced only to slaughter. Another USDA agency, the Food Safety and Inspection Service (FSIS), governs the safety of meat and poultry; FSIS inspects animals before slaughter and carries out other programs to ensure the safety of meat and poultry. As international experience with BSE proved, however, an effective traceability program is an important link in the food safety chain, because it facilitates traceback of diseased animals and prevents the spread of animal disease.

Margaret Rosso Grossman

Events

3rd Summer Academy on Global Food Law & Policy

25–29 July 2011, Villa La Collina, Cadenabbia, Lake Como, Italy

The third edition of the Summer Academy on Global Food Law and Policy convened by Prof. Alberto Alemanno from HEC Paris and organised by Lexxion, publisher of the *European Food and Feed Law Review*, was held from 25 to 29 July 2011 in Cadenabbia, Italy. It aimed at providing and fostering high-level debate on the emerging field of global food law. The academic programme stretched over 5 days and brought together participants from several countries and professional backgrounds. Distinguished speakers from academia, international and regional institutions, industry, as well as legal practitioners provided a deeply instructive insight into the disciplines, challenges and decision-making aspects of food law at the national, regional and transnational level.

“Is there something like “global” food law? Isn't this area of law highly fragmented due to diverging national and regional preferences expressed in a plurality of legal rules and disciplines? What are the respective roles for law and policy in the regulation of food?” These were some of the questions one had in mind when coming to the Academy. The sessions held in the beautiful and historical Villa La Collina provided answers but also, and foremost, the awareness that global food law is a nascent discipline where policy considerations play such a crucial role that a strictly legal perspective cannot possibly take account of all the issues at stake.

9 USDA, *Animal Disease Traceability: General Standards* (Version 1.1, 18 Mar. 2011).

10 9 Code of Federal Regulations part 79 (scrapie program); 9 CFR § 71.19 (swine). Regulations that govern particular diseases impose specific traceability requirements for diseased or exposed animals.

11 *Id.* parts 77 (tuberculosis in captive cervids, cattle and bison) & 78 (brucellosis).

12 APHIS, *Traceability*, *supra* note 6, at 50,084.

13 APHIS, *Questions*, *supra* note 6, at 5.

14 *Id.* at 5–6.

In his introductory lecture on global food governance, Professor Alemanno drew our attention to the fact that food is a social phenomenon touching upon many different perceptions and fields of study – and therefore reaching far beyond its mere legal aspect. We learned that at the European level, the focus of food law has shifted from free trade promotion to safety and quality considerations; this shift (one could say ‘change of paradigm’) was triggered by several food scares which led to the constitution of a comprehensive food law regime, comprising both rules and institutions. At the international (i.e. WTO) level, by contrast, prevention of protectionist practices and trade promotion remain the principal concerns. From a global perspective, the example of Bisphenol A highlighted the fact that one common health concern can lead to very different scientific assessments of risk and to even more different regulatory responses at the national level. Hence, the degree of integration achieved by the EU at a regional level is still far from being reality when “global” food law is considered.

The two following sessions provided an overview of food regulation in the EU and US, thus inviting us to reflect on comparative aspects and/or the different impacts these regimes have at a global level. In the afternoon of day 1, Dr. Barbara Klaus, lawyer at Meyer-Meisterernst, gave us detailed information on the general principles and requirements of European food law. After describing the current regime’s genesis, Dr. Klaus examined fundamental principles as well as more specific rules on safety and hygiene requirements, labelling, nutrition and health claims. She also addressed the enforcement of European food law through the duties imposed on food business operators and the establishment of a rapid alert system for food and feed. This detailed presentation truly allowed us to measure the dimension of EU food law as a “system” or “regime” going beyond punctual responses to isolated food crises.

On the second day, the presentation by Prof. Neal Fortin, Director of the Institute for Food Laws and Regulations at Michigan State University, focused on the recent US Food Safety Modernization Act which was signed into law by President Obama in January 2011. He demonstrated how amendments made to previous laws induce a shift of priorities from reaction towards prevention, and a strengthening of FDA’s enforcement authority. Prof. Fortin

also highlighted the implications of the FSMA for imported foods, since the new law places enhanced responsibilities on companies and increases controls on imports.

Also on the agenda was the institutional aspect of food law and policy, as exemplified by the European Food Safety Authority (EFSA). Prof. Vittorio Silano, Chair of the EFSA Scientific Committee, assessed the progress made in the field of nutritional and health claims since the entry into force of Regulation 1924/2006. He emphasized EFSA’s role in the evaluation of health claims (namely carrying out scientific assessments and providing guidance to applicants and other stakeholders) as well as the main issues addressed during the evaluations. He found that, although some aspects of the Regulation are well-implemented, there is still room for improvement concerning *inter alia* innovation. He also called for the establishment of a monitoring mechanism to prevent the misuse of health claims and nutritional profiles. Dirk Detken, Head of EFSA’s Legal and Regulatory Affairs Unit, then made a strong claim in favour of EFSA’s institutional independence. He presented expert selection procedures and the composition of the scientific committee and panels before identifying some ways of improving the public’s perception and confidence in EFSA’s independence.

The following and largest set of presentations provided different points of view on food law. Listening to speakers from the WTO, the industry and the Codex illustrated the diversity of interests at stake and hence the complexity of policy considerations underpinning global food law.

Gretchen Heimpel Stanton, Senior Counsellor in the Agriculture and Commodities Division of the Secretariat of the WTO, was the first speaker on day 3 of the Academy. She provided an overview of the WTO’s Agreement on Sanitary and Phytosanitary Measures. After explaining the agreement’s purpose, key provisions and the role of the SPS Committee, she listed some of the main trade concerns and disputes that arose in relation with the Agreement. The second part of her presentation addressed two specific issues: private standards and invasive species.

In the afternoon, Dr. Susanne Kettler, Regulatory Affairs Director at Coca-Cola Services s.a., depicted the industry’s perspective on the challenges of regulatory compliance with national and transnational food regimes. The impressive number of food legis-

lation areas and levels of regulation she listed made clear how many restrictions (or at least challenges) a company faces during the product development process and until a product is successfully launched on a given market. The example of “novel ingredients” showed how definitions and procedural conditions vary between national and regional regimes. Very interesting and thought-provoking was the prospective look at global developments that may affect the regulatory landscape, be it socio-demographic changes such as an ageing population and the growth of the global middle-class, or a shift of economic power from East to West.

During the morning session of day 4, Jérôme Lepeintre, Head of the EU Delegation at the Codex Alimentarius Commission, delivered an insider’s view of Codex Alimentarius. After a brief review of the Codex’s structure and its status under WTO law, Mr. Lepeintre examined the role of science in its standard-setting procedures with particular emphasis on “other legitimate factors” at the risk-management level – which, he said, have still to be fully recognized at the international level. He identified participation of developing countries as one of the main challenges to the legitimacy of Codex standards and to the democratic character of the institution. Two case studies (GMOs and ractopamine) illustrated the diversity of interests at stake and the difficulty of building consensus in the Codex standard-setting process.

The keynote speech was held by Mr. David Byrne, former Commissioner for Health and Consumer Protection, who accepted to share some of his profound knowledge of the political context behind the making of European food law. By pointing to “conflicting and competing interests” on issues such as food safety, the role of science, the precautionary principle or GMOs, he provided us with an invaluable insight into the policy considerations which, at the highest level, shape the negotiations on and ultimately the consistency of European food regulation.

The Academy closed with a moot court which allowed participants to apply their newly-acquired knowledge to a particular case study. Under the supervision of Raymond O’Rourke, a lawyer specialising in food regulatory and consumer affairs, different teams provided different perspectives on the issues of nutritional labelling in the European context and private standards under WTO law.

In conclusion, the quality of the speakers, the inspiring working environment and the diversity of participants made the Summer Academy a professionally useful, highly enjoyable and recommendable experience.

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Stifling of Innovations by Regulation

5th International Food and Feed Law Conference

EffL’s 5th International Food and Feed Law Conference was actually themed “Regulation of Innovations”. But looking back at the event one can only conclude that innovations and regulation are at considerable odds. It seems as if regulation has effectively gained the upper hand and is about to stifle innovations. This does not only apply to the use of nutrigenomics, nanotechnology, biotechnology and genetically modified organisms or other substances than vitamins and minerals in food manufacture, but also to the import of traditional food from outside the EU, not to mention the more or less new authorisation procedures regarding food additives or feed ingredients. Risks are perceived to emerge almost everywhere; and until EFSA has fully assessed them regulation, essentially based on the precautionary principle, is employed as the preferred means to counter potential dangers. This does not only lead to the prevention of innovations, it can also act as a deterrent to innovators.

Whether new law is in the interest of consumers appears only as a remote question; often they are merely used as a reason for further legislation. Once a regulation is in force, however, it will no longer go away, even if it is clear that few consumers can benefit from the law in question and some benefits might have been achieved by a stifled innovation. Evelyn Breitweg-Lehmann, head of the competent unit of the German Federal Office of Consumer Protection and Food Safety, drew a striking analogy to the Roman Empire, claiming that the Romans succeeded in the end. But our knowledge of what has become of the Roman empire should signal to us that it is time to stop and properly review what has been regulated so far and how much further regulation we can suffer without