
LEGAL REGULATION OF FOOD SECURITY IN THE EU

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Summary. By signing the Association Agreement with the European Union on June 27, 2014, Ukraine has continued process of adaptation of its legislation in the field of food safety to European standards. A large part of the Association Agreement is devoted to the safety of food products and sanitary and phytosanitary measures. According to Chapter 4 «Sanitary and Phytosanitary Measures» of the Association Agreement, Ukraine should introduce an equivalent European system for monitoring the quality and safety of food products. The benefits for Ukraine after signing the Association Agreement are unconditional, but more important is to implement its provisions.

The methods of comparative, analytical and logical analysis were used. Taking part in the project 575523-EPP-1-2016-1-UAEPPIMO-MODULE «EU Environmental Policy and Law» we have studied European standards in the field of food security. General principles of legal regulation of food safety in the EU were analyzed. The state of adaptation of Ukrainian legislation to the requirements of the European Union law in the field of food safety was investigated. Some gaps in Ukrainian legislation were found.

Keywords: food safety, EU law, sanitary and phytosanitary measures

Introduction.

Implementation of EU policy in the field of food safety in Ukraine demands obligatory coordination of organizational and legal aspects of governance that is crucial for its effective functioning. That is why it is important to study relevant EU legislation, make analysis of what Ukraine has done in order to adapt national legislation in the field of food

safety to requirements of EU law and determine what else should be done.

The purpose of the article is analysis of EU legislation in the field of food safety and the state of adaptation of Ukrainian legislation in the field of food safety to requirements of EU law.

Methodology of the research. The article was written as part of the project «EU Environmental Policy and Law» which is carried out at the department of

International Law and Comparative Law of the National University of Life and Environmental Sciences of Ukraine. The methods of comparative, analytical and logical analysis were used to study EU food safety legislation and compare it with Ukrainian legislation in this sphere.

Results.

General principles of the legal regulation of food safety in the EU are set out in a number of regulations and directives, in particular: Regulation of the European Parliament and of the Council 178/2002 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; Regulation (EC) № 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules; Regulation (EC) № 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs; Regulation (EC) № 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin; Regulation (EC) № 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption; Commission Regulation (EC) № 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs; Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption.

Regulation (EC) № 178/2002 provides the basis for the assurance of a high level of protection of human health and consumers' interest in relation to food, taking into account in particular the diversity in the supply of food including traditional products, whilst ensuring the effective functioning of the internal market. It establishes common principles and responsibilities, the means to provide a strong science base, efficient organisational arrangements and procedures to underpin decision-making in matters of food and feed safety [1]. Prior to the creation of the EFSA, EU policy had been aimed at eliminating trade barriers within the European market and its goal was economic success rather than safety assurance [2, p. 433].

The Regulation also sets forth the obligations of EU Member States with regard to food trade, general safety requirements of food law and traceability, stating the basic rule that «food shall not be placed on the market if it is unsafe» [3, p. 31]. It further regulates liability issues, making reference to the responsibility of both states and business operators [4]. In this latter respect, it is important to take due consideration of the direct effect of the Regulation, which enables European citizens to enforce consumer rights both against member states before Community courts (vertical direct effect), and against other individuals and companies in actions before national judges (horizontal direct effect). Protecting global health from foodborne hazards is a compelling duty and a primary interest of both states and non-state actors; it calls for enhanced proactive cooperation between national and international institutions [5].

Traceability is considered to be a vital issue for all stakeholders in food supply chains. The most important

driver is the increasing societal need to guarantee food quality and provenance. Because consumers cannot know in detail what processing steps are executed in the production of food and what ingredients or resources are used in these steps, they want to be assured that food products are safe, healthy, sustainable, and of high and consistent quality [6]. Based on EU experiences each EU member state tries to implement good practices in an effort to improve the traceability [7, p. 727]. There is no other way to truly ensure the public's health than through cooperation [8].

Articles 5 to 10 of Regulation 178/2002 define the general principles that shape the legal framework of EU horizontal food legislation. In particular, the following principles of horizontal legislation include:

1) Risk analysis. In order to achieve the general objective of a high level of protection of human health and life, food law shall be based on risk analysis except where this is not appropriate to the circumstances or the nature of the measure. Risk assessment shall be based on the available scientific evidence and undertaken in an independent, objective and transparent manner;

2) Precautionary principle. In specific circumstances where, following an assessment of available information, the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure the high level of health protection chosen in the Community may be adopted, pending further scientific information for a more comprehensive risk assessment;

3) Protection of consumers' interests. Food law shall aim at the protection of the interests of consumers and shall provide a basis for consumers to

make informed choices in relation to the foods they consume. It shall aim at the prevention of: fraudulent or deceptive practices; the adulteration of food; and any other practices which may mislead the consumer;

4) Principles of transparency. There shall be open and transparent public consultation, directly or through representative bodies, during the preparation, evaluation and revision of food law, except where the urgency of the matter does not allow it. Without prejudice to the applicable provisions of Community and national law on access to documents, where there are reasonable grounds to suspect that a food or feed may present a risk for human or animal health, then, depending on the nature, seriousness and extent of that risk, public authorities shall take appropriate steps to inform the general public of the nature of the risk to health, identifying to the fullest extent possible the food or feed, or type of food or feed, the risk that it may present, and the measures which are taken or about to be taken to prevent, reduce or eliminate that risk [1].

EU legislation contains stringent requirements for product safety, minimizing possible food poisoning. The European system is organized in such a way as to quickly detect and remove a dangerous product from circulation and promptly eliminate the cause of the problem. This is achieved through the requirement of traceability throughout the chain «from field to table» - when every entrepreneur knows where he got the raw materials, each ingredient for his product and where his product goes further. In these sphere Ukraine still faces many challenges. However, some work has already been done. The following laws were adopted with the aim of adapting Ukrainian legislation to EU legislation: «On Basic Principles and Require-

ments for the Safety and Quality of Food Products», «On the safety and hygiene of feed», «On state control, carried out in order to verify compliance with the legislation on food and feed, animal health and welfare», «On by-products of animal origin, not intended for human consumption», «On Amendments to Some Laws of Ukraine on Identification and Registration of Animals». The following laws were amended: «On seeds and gardening material», «On State Regulation of Imports of Agricultural Products», «On the State Security System in the Creation, Test, Transposition and Use of Genetically Modified Organisms».

On the way to reform of state control over observance of the legislation on quality and safety of products by market operators, a significant step was made by adoption by the Supreme Council of Ukraine of the Law «On State Control over Compliance with Food Legislation, Feed, Animal by-products, Health and Animal Welfare» of May 18, 2017 aimed at establishing the legal and organizational basis for state control in the said sphere. Earlier food market operators were warned in advance about inspections, which obviously did not contribute to the effectiveness of such a form of state control. Now state control measures are implemented without warning (notification) of the market operator, except for audit and other cases where such a warning is a necessary condition for ensuring the effectiveness of state control and meets European standards.

Article 18 of the Law «On State Control over Compliance with Food Legislation, Feed, Animal by-products, Health and Animal Welfare» establishes risk-oriented nature of state control, which is also one of the innovations of the Law. This means that the lower the level of risk that the activity of a par-

ticular market operator sets, the less often the competent authority controls this operator. Nowadays the only body authorized to exercise control over observance of the legislation on quality and safety of products in Ukraine is State Committee for Consumer Safety, which began its work in April 2016. State Committee for Consumer Safety replaced several supervisors, who often duplicated each other's functions.

Another innovation is enabling of audio and video recording of control procedure. According to part 10 of article 18 of the Law «On State Control over Compliance with Food Legislation, Feed, Animal by-products, Health and Animal Welfare» inspectors, state veterinarians, other persons carrying out state control activities, as well as market operators, have the right to record the process of exercising state control by means of audio and video equipment.

Also, legislation provides for the gradual transition of food manufacturers to the mandatory use of HACCP procedures. In September 2017, the HACCP system became obligatory for the first group of enterprises – producing food products with unprocessed ingredients of animal origin (dairies, slaughterhouses and meat processing enterprises). It should be emphasized that control with the use of HACCP procedures should be handled by the manufacturer himself and he is responsible for the safety of products. But at the same such control is exercised also by the State Committee for Consumer Safety.

Discussion.

The Law of Ukraine «On State Control over Compliance with Food Legislation, Feed, Animal by-products, Health and Animal Welfare» completely renewed approaches to state control.

The law strengthened the responsibility of producers and entrepreneurs for the safety of food products, introduced the principle of control of food production without warning, expanded the grounds for an unscheduled visit to production and established the mechanism for public monitoring. The law clearly defines the powers of inspectors. Even a list of issues that an inspector can put during a routine inspection will be the same for all enterprises and is known in advance. The law provides for obligatory introduction by the manufacturers of HACCP procedures and traceability requirements. Legislation on the safety and hygiene of feed and on seeds and gardening material has been largely aligned with the requirements of the EU.

At the same time, it is necessary to enact further laws aimed at adapting Ukrainian legislation to EU legislation. It is necessary to change the legislation concerning nutritional supplements and flavours. Ukraine should put under strict control the remains of pesticides, veterinary drugs and agrochemicals, mycotoxins, etc. in food products. It is necessary to improve legislation on the protection of plant health, control of infectious and other animal diseases, as well as the welfare of animals.

References

1. Regulation of the European Parliament and of the Council 178/2002 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 L 31, 1.2.2002, p. 1–24.
2. Leibovitch, E.H., (2008). Food Safety Regulation in the European Union: Toward an Unavoidable Centralization of Regulatory Powers. *Texas international law journal*, 34, 433–440.
3. Funta, R., Golovko, L., Juriš, F. (2016). *Európa a európske právo*. Bratislava: IRIS.
4. Ladychenko, V., Golovko, L. (2013). Legal Regulation of the Common Agricultural Policy in the EU Earth Bioresources and Life Quality, 3. Retrieved from: <http://gcherae-journal.nubip.edu.ua/index.php/ebql/article/view/102>
5. Negri, S. (2009) Food Safety and Global Health: An International Law Perspective. *Global Health Governance*, 1. Retrieved from: https://www.researchgate.net/publication/265435966_Food_Safety_and_Global_Health_An_International_Law_Perspective
6. Scholten, H., Verdow, C., Baulans, A., Van der Vorst, J. (2016). *Advances in Food Traceability Techniques and Technologies*. Woodhead Publishing. Retrieved from: <https://www.researchgate.net/publication>.
7. Hadjigeorgio, A., Soteriades, E., Gikas, F., Tselentis, Y. (2013). Establishment of a National Food Safety Authority for Cyprus: A comparative proposal based on the European paradigm. *Food Control*, 30 (2), 727–736.
8. Gostin, L.O. (2008). *Global Health Law: Health in a Global Community*. Retrieved from: https://scholarship.law.georgetown.edu/ois_papers/15.

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Право. Людина. Довкілля, 10(1): 128–133, <https://doi.org/10.31548/law2019.01.018>.

Анотація. Підписавши Угоду про асоціацію з Європейським Союзом 27 червня 2014 р. Україна продовжила процес адаптації вітчизняного законодавства у сфері безпеки харчових продуктів до європейських стандартів. Значна частина Угоди про асоціацію

присвячена безпеці харчових продуктів і санітарним та фітосанітарним заходам. Відповідно до розділу 4 «Санітарні та фітосанітарні заходи» Угоди про асоціацію Україна повинна запровадити еквівалентну європейську систему моніторингу якості та безпеки харчових продуктів. Переваги для України після підписання Угоди про асоціацію є безумовними, але важливішим є виконання її положень.

Використовувались порівняльний, аналітичний та логічний методи. Беручи участь у проєкті 575523-EPP-1-2016-1-UAERPMO-MODULE «Екологічна політика та право в ЄС», ми вивчили європейські стандарти в галузі продовольчої безпеки. Проаналізовано загальні принципи правового регулювання безпеки харчових продуктів в ЄС. Досліджено стан адаптації українського законодавства до вимог законодавства Європейського Союзу у сфері безпеки харчових продуктів. Виявлено деякі прогалини в законодавстві України.

Ключові слова: безпека харчових продуктів, законодавство ЄС, санітарні та фітосанітарні заходи
