
Consumer Protection for Food Safety under European Law

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ABSTRACT

In our day to day life with changing times consumer protection has become not less than a human right, consumer protection has been given more importance in last few decades and nations and unions have made their own rules and regulation to control consumer exploitation. The aim of European consumer policy is to make the European Union a tangible reality of 500 million citizens by generating the rights as consumers. This paper tends to analyze consumer behaviour in Europe with both qualitative and quantitative measures of the prevailing situation, in the first half I will be dealing with the general principles with respect to consumer protection in European Union countries. Later in the second half I will critically examine the tolls used for the consumer protection related to food items and the armoury in the hand of general consumer and also with the industries for bulk deals whichever is prevailing the European Countries. In the end I would be examining the effects and improvements over the years and the scope for more developments in this regards and while doing this I will give glimpse of laws and approach prevailing in our country regarding to perishable goods as well as in some of the developed economies with thus regard.

KEYWORDS- Consumer Rights, Food Safety, Food Labelling, Affluent Economy, European Union Law.

Introduction

Being the most reputed organisation in terms of economic and political support for each other European Union has their own regulations for the members in every aspect, when we see the regulations regarding consumer protection very prominent one comes to picture is the Treaty on the Functioning of the European Union, under article 169 of this enables EU to follow the Ordinary Legislative Procedure to protect consumer health and safety and economic interests and promotes Right to Information, education and to organise themselves in order to safeguard their interests. As we observe that there is no such particular definition of 'Consumer' in European Union Law. Every state defines and interprets the term with their own conditions to fulfil where lies the divergence among all of them. Some of the definitions can be seen in Contract law of Brussels Regulations as well as Rome Regulations related food products and distribution where it is necessary to give the proper interpretation of the term for avoiding conflicts.

Research Problem

In the most developed countries of Europe consumer face exploitation by the Industrialists and local vendors in terms of daily exchange of foods and eateries, whether they handle these situations in very different ways being developed economies like United States and Great Britain.

Research Question

1. Whether the key EU policies areas live up to the goals of consumer protection in case of food products and perishable goods?
2. Whether the tools used to assess, monitor and improvements are different from other developed economies or developing countries like U.S.A. and New Zealand and to what extent?

Hypothesis

The European Law directives is binding only as to the results it sets out to achieve, the means are to the member states. Member states must transpose directives into their national law.

Literature Review

- **Cardiff EDC is part of the University Library Service at Cardiff University-** There was no specific provision for a Community consumer policy in the Treaty of Rome, although it was implicit in Articles 85 and 86 on competition. The initiative for a policy came from the Heads of Government at the Paris Summit of 1972. At the time, Member States' own consumer policies reflected different national cultures, traditions, administrative systems and priorities. For consumers to have adequate protection when trading in the single market a Community-level policy was needed.
- **European Union: New Directive Amends Consumer Protection Rules-** The aim of establishing and protecting the internal market was first set out in article 13 of the Single European act of 1987. Today it is codified in article 114 of the TFEU. The Protection of Consumers is an integral part of safeguarding the internal market. As a result of the 2017 Commission report of the "fitness check" on EU consumer law, the then-commission President Jean-Claude Juncker announced in a 2018 communication titled "A New Deal for Consumers" a need to modernize certain rules and to strengthen the level of enforcement and compliance. The directive is part of this new deal for consumers.
- **Comparative analysis of EU standards in food safety, environment, animal welfare and other non-trade concerns with some selected countries-** The selected third countries have many standards concerning food safety in line with the Codex Alimentarius. Notwithstanding, differences in standards between the EU and the

selected third countries exist. These include the type of pesticides and veterinary drugs allowed and the associated maximum residue levels, the common use of growth hormones in cattle in the USA and in pigs in Brazil, the lactic acid treatment of beef in the USA, approval of genetically modified organisms in third countries like the USA and Brazil but not (yet) in the EU, obsolete legislation and enforcement in Ukraine, and insufficient enforcement of standards.

- ***Paper prepared by the Ministry of Agriculture, Nature and Food Quality and the Food and Consumer Product Safety Authority of the Netherlands-*** In the White Paper of the EU the entire food production chain (including animal feed) is held responsible for the safety of food. The Governments of the Member States verify that this responsibility is adequately met by the producers to protect the health and well-being of consumers. The document contains 84 action points that have to be processed into community law to strengthen the food safety systems of the Member States. Within this framework, the EU introduced the **General Food Law** in 2002, defining general food safety principles and food safety procedures. Once this Regulation was in place, the **European Food Safety Authority** was set up. This organization started its activities in 2003, by focusing on risk assessment and scientific advice in the field of food safety questions.
- **The resolution of 15 April 2014 on consumer protection – protection of consumers in utilities services** calls for procedures for switching energy providers to be sped up and simplified, insisting also on the need to make it easier for customers to switch electronic communication service providers without additional fees other than the actual switching cost (without loss of data and with a minimum of formalities).
- **In its resolution of 15 November 2011 on a new strategy for consumer policy**, by recalling that the consumers do not form one single homogenous group, as there are considerable differences among them in terms of consumer skills, awareness of legislation, assertiveness and willingness to seek redress, the Parliament calls for all future consumer policy measures to be based on a holistic approach which places consumers at the heart of the single market. The resolution also calls for targeted funding to be allocated to consumer research projects, particularly in the field of consumer behaviour and data collection.

Scope and Objective of the Study

The scope of this document is to provide overview of policies of European Union focusing on the general principles related to perishable goods and eateries, some of the common objective are as follows:

- To study various tools used to monitor and improve the position of consumers within European Union.
- To analyse and present the key EU policy areas related to consumer protection in case of food items.

- To analyse the past improvements in consumer welfare and success stories in terms of perishable goods.
- To study and analyse the shortcomings and future policy trends.
- To analyse the definitions of evolving concepts of **Prosumers** and protecting consumers from the new practices of collaborative economy.

Methodology

The research methodology used here is doctrinal form of study. I have used the secondary sources like books and articles written by famous authors and eminent jurists.

Limitation of the Study

The limitation of this study is that it lacks empirical data and relies of primary and secondary sources.

1. Tools protecting consumers and EU legislations regarding Food safety

European Consumer Policy tends to establish such a legislation for its customers which they adhere to it and develops sense of protection against the manufacturer and food suppliers in the region, for achieving this goal they are trying to align consumer rights and their policies and make them directly proportional to each other and make sure they should not collide with each other in attaining their enhanced welfare and effectively protecting their safety as well as their economic interest.¹

Article 4(2) (f), 12, 114(3) and 169 of TFEU (Treaty on the Functioning of European Union),² consumer protection issues are a shared competence of the EU and Member States. Article 38 of the Charter of Fundamental rights of the European Union constitutes the primary law for consumer protection policy. Article 169 provides that European Union shall ensure for the protecting the health, safety and economic interests and also shall contribute for their Information, Education and to organise themselves in order to safeguard their interest. One of the main challenges are being faced by the European Union in my view is that no where customer is defined uniquely in EU law and there is differences and ambiguity can be observed in the definitions of member states and in most of the EU directives³ it can be seen that definition is given in such a manner that it is beyond the scope or purposes of business, trade and commerce to be followed with and this results in the notion of consumers being in vague form till yet, however this is simplified by some of the member states and allied the definition of person to its natural person.

¹ Regulation (EC) No 593/2008 on the law applicable to contractual obligations, applying to contractual obligations in civil and commercial matters in the event of a conflict of laws.

² A European Consumer Agenda - Boosting confidence and growth, COM(2012) 225 final.

³ The right to consumer protection enshrined in Article 38 of the Charter of Fundamental Rights does not grant a substantive right to European citizens, but rather refers to the EU's objective of ensuring a high level of consumer protection. See M. Kingisepp: *The Constitutional Approach to Basic Consumer Rights*, 2012, p 58.

- **EU Legislation**

Union adopted its first legislation in the year of 1975 where it defined 5 fundamental rights of consumers such as right to protection of health and safety, right too protection of economic interests, the right to claim for damages, the right to education and lastly the right to representation. These policies have been imposed on the manufacturers whoever conducting business in European Union since the time being and these policies does not imply directly to the member states of EU and this is how EU issued 90 such directives for the consumer Protection in the region which also makes it difficult and cumbersome for the process to be executed as the differences lies between all the directives and cannot be bifurcated when it comes to the implementation. As the result of this any consumer cannot invoke the directive against the trader directly and for this conduct National Court has to interpret who can seek help from the European Court of Justice through preliminary ruling procedure.⁴

- **Tools to Monitor Markets**

After making policies the policy makers has to see the outcomes of it and there is a need of tool which can estimate the standards of the laid policies, so there is consumer scoreboard tool been used to monitor the outcomes,⁵ it is evidence based measure which is used for the determination of the existing situation by applying market data over it which provides for the national consumer conditions, cross border trade and the development of e-commerce in the region, apart from this a behavioural study is also been conducted by the European Commission over 51 sectors in which 30 are from Goods manufacturers and 31 from service providers to follow up the qualitative progress in the market condition.⁶

- **Tools for Education of Consumers**

With the policy making only not a complete solution to protect someone in the course it is also important to make people aware of their rights and interests which could help them in making right choices and there is less chances of involving in a dispute.⁷ It became more easy with an organisation named European Consumer Centres Network who helps consumers in defining their rights in their own language and helps in solving cross border disputes with the manufacturers and traders, another organisation named as Enterprise Europe Network working excellently in the field of consumer awareness with the help of 600 members across European Union and it has also several associated Medium and small enterprises with it who educates people regarding legislations in their respective regions.⁸

⁴ e C. Twigg-Flesner: A Cross-Border-Only Regulation for Consumer Transactions in the EU, 2012, p 20.

⁵ See Consumer Conditions Scoreboard for 2013.

⁶ See Consumer Markets Scoreboard for 2014.

⁷ See for instance Code of EU Online Rights.

⁸ See for instance the Consumer Financial Advice project ConFinAd.

- **Enforcement Tools**

After all efforts of policy making, monitoring and awareness it comes to the part of the enforcement of the same and to impose the control of the same of it through the organised channels and enforcement bodies for the dispute resolution.⁹ Here in Europe Union it is very essential to create a network in every member state who can assure for the proper actions to be taken within no time and resolve the disputes as soon as possible, so there is established network namely Consumer Protection Cooperation Network which ensures timely checks of the syndicates simultaneously in each member state to discover the breach of the consumer protection legislations in any sector. European Judicial Network is another network for the dispute redressal for not only Individuals or group of people but also for the Small and Medium Enterprises in solving the domestic as well as cross border disputes by applying and interpreting the legislations through regional cooperation.¹⁰

2. Key EU policy areas related to consumer protection handling food items and eatries.

Consumer protection is considered as transversal policy in European Union law, here EU legislations were only dealing with some specific issues related to the pre contractual terms and the related circumstances to it, so it has some of the separate regulation policies for dealing with the food safety issues and labelling of the products.

- **The EU White Paper**

These are the authoritative documents containing proposals for community action in a specific area. It is one of the important tools for Europeans as it contains proposals in the specific areas which drive their overall growth and development and considering in the area of food safety becomes very important to ensure the highest standards in terms of food safety and control. In this White Paper for food it is well established by the policy makers that all the control of food production chain must be in the control of Officials. For conducting three channels were set up who could all the responsibilities such as Operations, National Authorities and European Commission. Compliance and legislative provisions are dealt with Operations who ensures the risk management in their own initiative whereas National Authority ensures that Operators should respect food safety standards and people should comply with the legislations of EU regarding food safety by setting up control systems as wells as enforcing it in the particular regions to make it possible, and lastly European Commission take over the part of audit and inspections over National Authorities and

⁹ onsumer organisation – BEUC, European consumer voice in standardisation – ANEC, national consumer organisations etc.

¹⁰ Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (Regulation on consumer protection cooperation).

Operating body whether standards were met as per the given set targets and everything is in well effective manner for the said region.¹¹

- **General Food Law of European Union**

As there in White Paper we discussed the proposal of the policies to be given for the functioning of the smooth operations so there is European Union General Food Law which ensures the framing of coherent and transparent set of food safety rules. It establishes the policies for the food safety of European Union and lay the objectives through issuing guidelines, obligations and principles which could lead to the fixing food safety issues across the region. This body also ensures the harmonization of principles between the member state for complying one food safety measure and make sure they do not condescending each other, it lays down the policies so well that no member state is offended by the differences observed in the behaviour of the consumers in different regions of European Union. It has own channels for the smooth conduct of the operating, implementing and monitoring of the food safety standards laid down, it also ensures the transparency and tracing of the feed and food and their ingredients as this is very important part of any food control authority to have a close check on the ingredients being used by the producers and manufacturers and avoid the health risks associated with it, it is the work of Operations to keep the track and record of the supplies of the raw materials and ingredients to keep the track of the root cause.¹²

- **The European Food Safety Authority**

As we know that most of the European Countries faced the food safety crises in 1990's and it leads to the underlined Consumer's confidence in terms of food safety. Considering this situation European Union established a scientific body to provide independent and objective advice on food safety issues associated with the food safety chain. Its major role to be specifically work on the standards of consumer health protection and to ensure the high level of security issues related to food safety as also mentioned in the EU's White Paper. This body quickly adopted all its chores and responsibilities for the food safety and accountability of the standards, importantly this department added experts from all over the Europe in the elite panel who could advise on the food safety measures to the authorities which could lead in risk management system and also risk related to the animal health for the industries who deals in meat products.¹³

- **Private Food Authorities**

Europe have various type of private food controlling bodies which could help government in quality checks and official standards and procedures related to food safety and labelling

¹¹ EUROPEAN FOOD SAFETY CONTROL SYSTEMS: NEW PERSPECTIVES ON A HARMONIZED LEGAL BASIS

¹² In this respect see for instance Regulation 1223/2009 on cosmetic products or Directive 2009/48/EC on the safety of toys.

¹³ Here, see also the European Commission proposals for the review of current legislation under the Product Safety and Market Surveillance Package.

standards. To neutralize the effect of only Governmental benchmarks for the food safety standards these private bodies play vital role in gaining the confidence of consumers which give them the sense of fairness through this approach, in order to ensure these majors they require criteria and quality checks from the suppliers and these are different from the standards from the Government standards. The utmost goal of these bodies is to ensure integrity transparency and harmonisation of global agricultural standards. These bodies sometimes also collaborate with ISO (International Standards Organization) to ensure the safety of raw materials, manufacturing process, packaging chains, food services, catering services, transportation, storage and distributions, etc. for the better functioning of the overall sector and through which standards can be achieved to protect every individual even the person is consumer of small products in the region.¹⁴

3. Comparison of Food Safety Standards from the Policies adopted by Developed Countries

US model of Food Safety Standards

If we zoom in to the food safety standards of the USA it is very first thing which we can trace is to pass the HACCP (Hazardous Analysis Critical Control Point) certification for each and every business associated to meat, poultry and egg Industry to present their product in the market of United States. It is also mandatory for the farm to comply with the National Animal Identification system (NAIS) if they are into the business of meat production and have to mandatorily take 7 digit unique Identification Number for each and every animal in the farm and to maintain the records of it. These strict rules makes the US standards so high and show how much concerned they are in terms of consumer protection. At the same time if we look into the EU take on this point then the Nitrates Directive is the main rule EU follows for enabling the constraints in the Livestock production across the region which enforces the regulation standards as water quality check for the farm, agriculture associated who grows fodder for the animals, etc. to satisfy the consumer protection. US has not only imposed rules for the primary production nut the standards regarding the disposal of the nutrients and waste is also handled so carefully that it should not contaminate the ground water in the surrounding region and even they have controlled the odour emissions from farm which could lead to excessive ammonia in the surroundings is also been controlled by United States after restricting the large production units in the same place.¹⁵

New Zealand Model of Food Safety Standards

As we all know that New Zealand is a constitutional monarchy and democratic parliamentary structure who follows parliamentary approvals for the enactment of any bills into acts. New Zealand does not intensively contribute in the agriculture sector as much in comparison to the

¹⁴ See http://ec.europa.eu/priorities/digital-single-market/index_en.htm and the European Parliament resolution of 4 July 2013 on completing the digital single market.

¹⁵ Comparison of European and US Food Law Regulation in the Context of the Transatlantic Trade and Investment Partnership

rest of world due to its own challenges like soil erosion, declining biodiversity. This country also adopted certain legislations for the control of food safety measures and supplies in the country as well as cross border trade, one of them is Resource Management act which lays down certain regulations for the supply of animal related products and controls through the established bodies for the consumer protection in the country as well in the exporting countries. It has also Performance Based Verification Program for the quality checks, it has food control authority named as New Zealand Food Safety Authority, and this authority mainly ensures the compliance of the Risk Management Programme for the food industries. Some of the major regulations in the country that deals with the motive of Consumer Protection are Animal Products Act, 1999 and Food Act, 1981. As New Zealand is considered as the most efficient producer of milk and dairy products, here in the country every dairy farmer must operate under an RMP (Risk Management Programme) that is registered with the Ministry of animal affairs who monitors all the activities related to the trade in milk products. It is also given by the Government that only certain approved medicines and veterinary should be given to the animals and only if they carry a valid veterinary receipt with the, by the consultations. As we saw with US NAIS been imposed for the unique identification of the animals, here in New Zealand also there is a regulation of mandatory National Animal Identification and Tracing Act in which is provided that every animal in the farm across the country should be ear tagged with the approved RFID (Radio Frequency Identification Device) to match the records and enforcing the restrictions to cattle smuggling in the country and across the border.¹⁶

4. Outlook of Policy Developments in consumer protection and evolution in case of dealing with perishable goods.

Interesting thing about the policies and regulations are that they cannot be perfect and permanent and they needs to be changed over the period of time and this is quire obvious to the market as the dynamics of the world changes every hour. With the increasing experimentation in every area food is no exception anymore and the fusion with the different items makes it difficult for the authorities to relax and stay static regarding their rules related to food and breweries. One more aspect which harms this is that the changing behaviour of the consumers and changing habits of people which could lead to the new challenges in this sector for the controlling authorities. So, it is very much important for the policy makers to develop such rules that meet the current market challenges and provide training to the competent authorities who could deal with the situation effectively and efficiently as and when needed.¹⁷

In the area of Policy Development of European Union many steps were taken for the improved consumer protection measures. It has identified certain objectives to deal with the

¹⁶REPORT OF THE COMPARABILITY* DETERMINATION OF THE FOOD SAFETY COMPONENT OF THE NEW ZEALAND MINISTRY FOR PRIMARY INDUSTRIES

¹⁷ See Digital Consumers and the Law – Towards a Cohesive European Framework, Wolters Kluwer Law & Business, 2013, pages 41-51.

product and service safety, and enhancing the market surveillance framework. When new challenges grow such as food hoarding then it is quite necessary to reinforce the regulations related to food transportation and distribution channels.¹⁸ With the increased competence among the manufacturers and service providers in 21st century it is very important to raise awareness among the consumers about their rights and regarding the various products so that they can take the appropriate choices. As the result if increased competition it is also important for the consumer participation in the market to avoid the monopolistic situation in the market and undue influence over the products of only one company.¹⁹

There is another challenge that is procuring the sector of food industries which is affiliated to the development of the concept of Globalisation and trades beyond the boundaries. One of the main problem that is faced by the consumers and the manufacturers is dispute resolution as this now becomes the matter of International laws and there applies the International treaties which are done by the nations and if there is any ambiguity in the agreement persists then it become way more difficult for the aggrieved party for claiming appropriate damages so this aspect has to be adopted so dynamically that it will not harm the sentiments of the other countries and provides protection to the citizens also. Other major challenge is imposed by the technology as we as we can observe that it is becoming the only medium of survival for all the business persons so food industry is also not left out with its effects, most common issues comes in the payment gateways or the taxation part of it and the mode of transfer of payments, very common example can be given in the current time is emerging behaviour of payment through Bitcoins,²⁰ as we know that India is still in the dilemma of using it as the mode of exchange yet then we see other nations like USA and several European Union State are imposing this in each and every thing which is way more cumbersome for the traders of the food and beverages products across the borders. So in this regard it has to be given certain established guidelines between the countries or one unique code which could be helpful in dealing with matters of this subject.²¹

The concept of 'prosumers'²² has evolved in the recent years where it is the derivative of the two terms producers and consumers, as the food industry is evolving so quickly it has shown the diversities into it where a person acts as a consumer for someone and producers for some other market but this concept evolves with the businesses who produce and consume at the same time and indirectly effect the society through the product chain system and which is very much important to keep check on. The main issues arise in the terms of the legal obligations as to decide the term prosumers in the matter of judicial proceedings specially it is very difficult for the interpreting body to decide the matter like this. For instance to

¹⁸ Commission Work Programme 2015 - A New Start, 2014. For specific new legislative proposals envisaged by the Commission in 2015, see also Annex I: New initiatives.

¹⁹ Commission Work Programme 2015 - A New Start, 2014. For specific new legislative proposals envisaged by the Commission in 2015, see also Annex I: New initiatives.

²⁰ The advantages of digital currencies can be low transaction fees for the users and anonymity of use as they provide an electronic peer-to-peer payment network with no third party involved. See for instance Bitcoin - Market, economics and regulation, EPRS, 2014.

²¹ Latvian Presidency of the European Union - BEUC priorities 2015, 2014.

²² See A. Toffler: The Third Wave, 1980.

understand this concept more widely is a person who is breeding dogs for several years as a passion then he decides to do business by selling those to prospect consumers then this is the matter of professionalism or business has to be decided by the judiciary and any disputes if arise in the future regarding this then in which way it should be tackled for ensuring the consumer protection in the country.²³

Findings of the Study

- Food operators are entirely responsible for the quality and safety of the food they produce and provide to consumer markets.
- Food safety legislation and control are meant to impose this responsibility and to verify that all policy conditions are adequately met.
- Food safety legislation in the European Union Member States is largely harmonized under Community law.
- A new policy approach has been introduced after food scares in the 1990s. It is based on risk analysis and complies with principles of the SPS Agreement of WTO.
- Harmonization of food control in the EU is based on specific criteria and not on control structures. There should be one specific template for an official control structure, which takes into account a country's historical backgrounds and economic circumstances.
- For developing countries and economies-in-transition technical assistance and capacity building in the field of food legislation and control are valuable tools to enhance the international trade of safe and wholesome food products.

Suggestions and Conclusion

Consumers, by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision', were the words of US President JF Kennedy in 1962, which marked the dawn of consumer rights. A lot has changed since then, but the fast-paced and ever- changing world is still a constant in our daily lives as consumers. In recent years, EU consumer policy has shifted from the technical harmonisation of standards to the recognition of consumer protection as a part of the effort to establish a 'Europe for citizens'. But what precisely does the European Union consumer protection legislation encompass and which tools are used to monitor and improve the protection of European consumers? This document seeks to answer these questions, providing a snapshot of the main consumer policy developments in recent years, together with success stories, shortcomings and future challenges for legislators.

Although Europe has its way on control procedure and sanctions but even now it has not been fully harmonised which is the need of hour. Another way the system could get better is that official controls should be fitted to the national food safety framework. Another suggestion to European Union on consumer protection would be that there should be one specific template

²³ Finish Consumer Dispute Board 1884/36/07, 21 September 2009.

for an official control structure, which takes into account a country's historical backgrounds and economic circumstances.

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