

# foodwatch<sup>®</sup>



## LOST IN THE SUPERMARKET

Why European food law fails  
to protect consumers

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## LOST IN THE SUPERMARKET – Why European food law fails to protect consumers

More than ten years ago – in 2001 – the epidemic of „mad cow disease” (bovine spongiform encephalopathy or BSE) reached its peak for the time being. To date, over 150 people worldwide have died from the human form of the disease (vCJD) after consumption of BSE-infected beef. The animals had been fed with inadequately sterilised meat-and-bone meal from infected cows. These events made it shockingly clear that the practices of the food and feed industry had severely endangered and harmed the health of consumers. What also became apparent, however, was that the government, through inadequate regulatory oversight of the feed industry and cattle farmers, had failed in its duty to protect public health, thereby violating consumers’ fundamental right to physical integrity (German Basic Law, GG, Art. 2, Sec. 2, Clause 1). Consumers had no chance to defend themselves or to recognise the risks they were taking by consuming beef. No one was held liable for this catastrophe.

In Europe, the BSE crisis marked a turning point in consumer protection. A „General Food Law” (EC Regulation 178/2002) was introduced in Europe and implemented into a new national food law in Germany (German Food and Feed Code – LFGB). The European Food Safety Authority (EFSA) was established. In Germany and other EU Member States, ministries of consumer protection were created. The BSE crisis in Germany resulted in a comprehensive reorganisation of the regulatory risk-assessment system for food safety and the establishment of both the Federal Office of Consumer Protection and Food Safety (BVL) and the Federal Institute for Risk Assessment (BfR).

But what is the situation today? Has the legal position of consumers actually improved significantly? Have the basic consumer rights formulated more than 50 years ago by John F. Kennedy, namely the right to safety, the right to be informed, the right to be heard and the right to choose, actually been protected? Is the consumer on equal footing with manufacturers and retailers when it comes to protecting his interests? Can he truly fulfil his role as an „empowered” consumer? Is the consumer really the sovereign driver of the marketplace, or is his legal position weak? And lastly: is he the ruler of the food market, or its victim?

This paper seeks to explore these issues. The first section offers a description of the significance of consumer protection in EU primary law, as well as the general principles of food law, both at national and EU level. Section 2 follows with examples of insufficient measures for protecting public health and the widespread use of fraudulent and deceptive practices in spite of the fact that fraud and deception are prohibited under food law. Section 3 analyses the legal shortcomings responsible for the discrepancy between law and practice: i.e. between the high theoretical level of protection offered by food law and its actual implementation. Section 4 looks into the causes and implications of the identified shortcomings. And finally, Section 5 summarises foodwatch’s demands for improving the legal position of the consumer in the food market.

These demands are in reference to both national and European legislation. With respect to actual food law, i.e. on the production and labelling of foods and their introduction to the market, the national and European measures required are practically identical, owing to the extensive harmonisation of food law. Differences exist between EU Member States mainly because the respective flanking measures vary in their organisation and implementation; these measures include systems for food controls, information rights legislation and provisions of civil and criminal law.

Berlin, July 2014

## SUMMARY / THESES

**1.)** German and European food law provides explicitly for the preventive protection of consumers from health hazards and fraud/ deception. Any product or practice with the potential to cause an adverse health effect or mislead consumers is considered a health hazard or fraudulent product/practice, respectively. In other words, there is no need for actual health effects or fraud to occur.

**2.)** Nevertheless, the consumer is currently being exposed to significant health risks, and fraudulent and deceptive practices are the order of the day. The relevant legislation does not operate preventively, but instead remedially. By the time a fraudulent practice or health hazard is identified, the food in question has, in the vast majority of cases, already been consumed.

**3.)** The following are some examples of inadequate health protection: food additives with potential health risks (e.g. azo dyes), hazardous contaminants (e.g. acrylamide in starchy foods), dioxin in milk, meat and eggs as a result of contaminated animal feed, antibiotic resistance in humans due in part to the vast use of antibiotics in farmed animals, health hazards associated with (hidden) high levels of risk nutrients, such as sugar, salt and fat, in processed foods and the risks associated with the diversion of animal by-products back into the food chain („Gammelfleisch”).

**4.)** Laws against fraud and deception are violated regularly and on a large scale (horsemeat in beef lasagne, conventionally produced eggs falsely labelled as organic). However, these laws are often even „legally” circumvented through the existing provisions for product presentation and information. These practices mislead consumers with respect to the source, flavour, nutritional value, ingredients, production methods and health effects of foods („legal fraudulent labelling”).

**5.)** Insufficient deterrence (penalties/fines) further facilitates breaches of the already inadequate fraud-prevention and health-protection provisions. Attempts to enforce consumer claims under civil law in cases of health endangerment have little likelihood of success, because only very rarely can a causal link be proved between the consumed food and the health damage caused. Legal proceedings brought by consumers or consumer groups regarding violations of anti-fraud policies have no significant impact.

**6.)** Information rights, which should be able to support consumers in the realisation of their right to protection from health hazards and fraud, are largely ineffective. In practice, it is impossible for consumers to access company and government information quickly and inexpensively enough for them to be able to use this information to defend themselves from fraud or potentially dangerous products. The provisions requiring government agencies to provide information in cases involving health hazards, fraud and revolting, unhygienic conditions are also inadequate.

**7.)** The control of foodstuffs in Germany is not efficiently organised – at the expense of consumer rights. For example, the percentage of false declarations at food-processing facilities and in the catering industry, of breaches of hygiene requirements in food businesses, including restaurants, and of pesticide residues above the maximum permitted levels in fruits and vegetables has remained consistently high for the past several years.

**8.)** The discrepancy between the high theoretical level of protection offered by the legal system and the actual implementation of these laws is the result of shortcomings in the implementation and enforcement of binding principles of law (e.g. the precautionary principle, traceability) as well as the legislation on health protection and fraud prevention, where these principles are elaborated upon in concrete terms. With its lobbying power, the food industry has succeeded in undermining the preventive approach of food law at all levels.

**9.)** The food industry profits from the obstruction of the preventive principle, because preventive regulations for manufacturers and retailers would privatise the costs of health protection and fraud prevention. A solely remedial approach to protection against fraud and health hazards, on the other hand, socialises the costs, lightens the burden on companies and increases the burden on society. The political system has failed to halt this development, thereby surrendering its control over the market to the food industry.

**10.)** Major changes must be made to the legal framework in order to ensure that the central guiding principles of food law – the precautionary principle and the requirement of traceability – are being effectively applied in practice and that consumers are therefore being protected through preventive action. Information obligations for government agencies and companies, information rights for consumers and supplementary criminal and civil codes governing sanctions and liabilities must complement this change in the legal framework and, to the same extent, exert a strong preventive effect.

**11.)** food legislation that is focused on prevention will contribute to the reduction of bureaucracy, because transparency, accountability and potent sanctions are effective elements of market self-regulation. Furthermore, a fundamental improvement in the legal position of consumers is required in order to eliminate the democratic deficiencies of consumer protection that exist at European and national level. Law-making at EU level is not subject to adequate democratic control and therefore leaves the door open for the lobbying interests of the food industry to the detriment of consumers (e.g. comitology procedures used in the setting of limits). Likewise, the national law-making powers still remaining with Germany are dominated by the interests of the food industry (example: determination of product identity statements/food guidelines by the „German Food Code Commission”). Lastly, consumers must be granted class action rights at national/European level that would enable them to file lawsuits enforcing compliance with the requirements of food law and consumer-protection law. In this respect, legal actions taken by associations would also serve to pool individual consumer interests.

**12.)** Some of the changes being called for in this report refer to food law in a more narrow sense, meaning to the production and labelling of foodstuffs. These changes can generally only be enacted at European level. However, the demands for improved information rights, more effective food controls and potent civil-and criminal-law measures refer to the situation in Germany and can be implemented at national level. In spite of the extensive European harmonisation of food law, there is considerable scope for strengthening the legal position of consumers in the food market by means of supplementary national measures. Accordingly, Chapter 5 differentiates between measures with respect to their required level of implementation: national or European.



## THE EU DISCOVERS CONSUMER PROTECTION

### 1.1. EU CONSUMER PROTECTION AND THE „EMPOWERED CONSUMER”

If proof were needed that it was the interests of the industry and not those of the consumer that were given priority in the forming of the European Union, this proof could be found in the amount of time it took for the EU to lay down the rights of consumers at Community level in the form of a treaty. It wasn't until the Maastricht Treaty of 1992 that the law of the European Union gained an independent legal basis for measures of consumer protection in primary law. This legal basis is standardised in the current Art. 169 TFEU (Treaty on the Functioning of the European Union, ex Article 153 TEC), whose first paragraph reads as follows: „In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.” Article 169 Paragraph 2 of the TFEU authorises the EU to contribute to the achievement of these objectives of consumer protection through a) measures adopted in the context of completing the internal market and b) measures which serve to support, supplement and monitor the policy pursued by the Member States. In fact, the Community had been obligated to adopt measures for the harmonisation of legislation required for the establishment of the internal market, acting by a qualified majority and with a high level of consumer protection (ex-Art. 95 TEC, now: Art. 114 TFEU), since as early as the Single European Act of 1986.

Consumer protection is as well-enshrined in EU primary and secondary law as environmental protection. One of the key guiding principles in these areas is the so-called „precautionary principle”. Although the only explicit mention of the precautionary principle in the TFEU is in reference to environmental protection, this principle also applies in the field of consumer and health protection.<sup>1</sup>

On the basis of primary law, legislative acts were issued in the form of directives and regulations for the purpose of legal harmonisation and the protection of consumers. With regard to the legislative acts governing the protection of consumers from fraud, the benchmark used for regulations is the „average consumer who is reasonably well-informed and reasonably observant and circumspect”.<sup>2</sup>

The question of how this model of the average consumer should be defined in detail remains controversial and in constant flux – in spite of the definition based on European law. Some feel that a high level of protection provided in the law would necessitate an overly restrictive, paternalistic state, while others believe that it would only require a minimum of state provision to enable the consumer to make responsible and well-informed choices. The actual interpretation of the model of the average consumer is an ongoing process that is shaped by court rulings and influenced by social developments and political discourse.

In current court rulings, the interpretation of the „empowered” consumer in reference to the food market is often based on a consumer model that, in foodwatch's opinion, does not adequately reflect the information needs of consumers. An example from food law is the ruling from the German Federal Court of Justice (Bundesgerichtshof) on the yoghurt „Monsterbacke”. The Court held that the advertising slogan for this product, „As important as a daily glass of milk” (actual German slogan: „So wichtig wie das tägliche Glas Milch”), was not misleading, in spite of the fact that, with a sugar content of 13%, the yoghurt contains twice as much sugar as milk. As a justification of its decision, the court reasoned that consumers would be able to find information on the sugar content by reading the ingredients labelling on the package.<sup>3</sup>

In foodwatch's opinion, the decisive factor in health protection is not the amount of information to which consumers are entitled, but rather – and above all – whether the information they are given enables them to make an informed choice quickly and easily on the basis of quality. Ensuring that „everything inside is listed on the outside” is simply not enough, as this essential basic requirement in no way guarantees the consumer's ability to make an informed choice quickly and easily on the basis of quality. Considering the increasing flood of often-incomprehensible facts and data that consumers are faced with today, it is particularly important that the information on food packaging be presented in such a way that any consumer, regardless of educational background, is able to understand it quickly. Furthermore, it is important to note that by no means is it always the case that „everything inside is listed on the outside” (e.g. the use of animal-derived additives in supposedly plant-based foods, such as gelatin in multivitamin juices).

<sup>1</sup> See Communication from the Commission on the Precautionary Principle, COM (2000) 1 final; see also Section 1.2.

<sup>2</sup> ECJ Case C-210/96 [1998], I-4657 – „Gut Springenheide GmbH/Oberkreisdirektor des Kreises Steinfurt”.

<sup>3</sup> foodwatch website (German version): Informieren, Verbrauchertäuschung, Werbelügen, <http://www.foodwatch.org/de/informieren/werbeluegen/aktuelle-nachrichten/monsterbacke-beschaefigt-europaeischen-gerichtshof/> (30.04.2013).

## 1.2. BSE-CATASTROPHE GIVES RISE TO NEW FOOD LAW

Food law can be seen as a part of consumer law. The BSE crisis provided a salutary shock. Food law was completely revised. A significant indication of this change is Regulation (EC) No. 178/2002 (the „General Food Law Regulation“), which in a sense represents the „constitution“ of food law. The General Food Law Regulation puts the rights of consumers at the focus of food law. It lays down the general principles and requirements of food law and has been in force since 1 January 2005 in all Member States.

On 7 September 2005 the Food and Feed Code (LFGB) came into force in Germany, implementing the provisions of the General Food Law Regulation. The LFGB replaced the former German Food and Commodities Law (LMBG) and can be viewed as an „umbrella law“ that lays down general principles and definitions for foodstuffs. Owing to the direct effect of the EU regulations in all Member States, the references in the LFGB to the General Food Law Regulation mean that the key concepts of food law, as well as the central requirements and prohibitions, can be attributed to European Union law.<sup>4</sup>

European Food Law and the national legislation based on it, in particular the LFGB, rest on two pillars: health protection (Section 5 of the LFGB) and the prevention of fraud (Section 11 of the LFGB). In other words, at the heart of food law is the consumer and his individual rights to the protection of his health and the protection from fraud and deception. The wording of the provisions on health protection and fraud prevention is clear and unambiguous. With respect to health protection, the „potential“ to cause an adverse health effect is sufficient to constitute a health hazard. There is no need for actual health effects to occur. The same applies to cases of fraud/deception: the potential to deceive is sufficient to constitute fraudulent behaviour. A product or practice is defined as misleading for consumers if, taking into account the views or habits of the average consumer, it could potentially affect their economic behaviour.<sup>5</sup>

In this way, EU food law guarantees the high level of protection it calls for. The precautionary principle, which is explicitly anchored in EU food law (Art. 7 General Food Law Regulation), also ensures this protection, as does the general requirement for the traceability of goods through all stages of production, processing and distribution, which is likewise included in the General Food Law Regulation.<sup>6</sup> Full traceability is equally essential for food safety (e.g. for the rapid identification of the entry routes of hazardous substances) and for providing information to consumers (e.g. product origin).

The intention of the precautionary principle is to ensure that the necessary protective measures are taken even in cases where there is uncertainty as to the extent of risk to human health.<sup>7</sup> In terms of procedural law, this understanding of the precautionary principle essentially implies a reversal of the burden of proof. In other words, it is up to the potential perpetrators to prove that the measures they are planning pose no risk to human health. This means that, when it comes to health, life and limb, it is no longer enough to simply provide information about hazards: consumers must also be protected through the establishment and enforcement of requirements and prohibitions. This means that, for risk minimisation, manufacturers and retailers must take preventive measures and only produce and use foodstuffs in a manner that is in line with the latest advances in science and research.

From the precautionary principle, we can derive the requirement that the food market be organised so as to preventatively eliminate or minimise health hazards. However, the relevant statutory regulations and corresponding inspection and verification obligations give rise to a system that, as explained below, is organised on the basis of remedial action instead of prevention. This is obviously a blatant shortcoming, because, as the reoccurring „food scandals“ demonstrate, fraud and health hazards are irreversible – especially when it comes to food supply. In other words, the „corpus delicti“ has, in most cases, already been irrevocably consumed by the time the fraud and health hazards, or damage to human health, become evident.

The legal position of the consumer is, however, not only dependent on the level of health protection and the effectiveness of anti-fraud policies. It is also determined by the rights that consumers, as players in the marketplace, have in their relationship with the state, the manufacturers and the retailers. They should have these rights not only as individuals but also when joining together as groups or associations, because the protection of consumers cannot be achieved by simply strengthening the individual rights of health protection and fraud prevention. Equally important is the legal position of consumers in relation to the rights of other players, e.g. with respect to the protection of fundamental rights and the ability to take action for the enforcement and further development of their rights.

<sup>4</sup> See Lebensmittelrechts-Handbuch, Munich 2011, II.A Grundlagen des Lebensmittelrechts.

<sup>5</sup> Ibid.

<sup>6</sup> Summary in the Commission's White Paper on Food Safety from 12.01.2000, COM (1999) 719 final; see also the Commission Green Paper on the General Principles of Food Law in the European Union from 30.04.1997, COM (1997) 176 final.

<sup>7</sup> See Cornelia Ziehm, „Vorsorgeprinzip – Handlungsgebot und Beweislastumkehr“ („Precautionary Principle – Requirement to Act and Reversal of the Burden of Proof“), expert report (unpublished) for foodwatch, September 2011.

In comparison with other legal issues shaped by EU law, food law is characterised by a very high degree of harmonisation; even details are standardised under European law. National derogations from EU law – e.g. with respect to labelling regulations – are only permitted in rare cases and in compliance with strict requirements for their justification. The high degree of harmonisation of European food law has a significant influence on the legal position of consumers. Even detailed provisions are no longer voted on by their elected national parliamentary representatives. Instead, these regulations are now made, above all, by the European Commission, as well as the members of the European Parliament and the Council of the European Union.<sup>8</sup>

Some areas, however, are still regulated by the Member States. These include the organisation of food controls, the imposition of penalties for infringements of food regulations, information rights for consumers and/or information obligations for government agencies/companies. In the area of product labelling, there is limited scope at national level through the so-called „guidelines” issued by the „German Food Code Commission”. For example, requirements for text size on packaging are established at European level, while the Member State can decide whether a manufacturer is permitted to use images of a certain fruit on fruit-tea packaging in spite of the fact that the tea contains no ingredients derived from this fruit but rather only flavouring derived from a different raw material.<sup>9</sup> In some cases, „voluntary” regulations are enacted at national level because mandatory regulations can only be made at European level, e.g. the „GM-Free” label for eggs, dairy products and meat products. However, these voluntary regulations effect no, or only very little, change because experience has shown that this label is only used by companies that stand to benefit directly from its use, and this is generally not the case for the majority of companies.

## HEALTH HAZARDS AND FRAUD/ DECEPTION IN LEGAL PRACTICE

### 2.1. INADEQUATE HEALTH PROTECTION

„Never before has our food supply been as safe as it is today; never have greater efforts been made in quality assurance at all stages of production and marketing.” This is the mantra of the food industry.<sup>10</sup> But it only tells half the story. It is true that cases of direct and hazardous food contamination, e.g. from contaminated water, have become rare. However, they still occur, and what is worse, they are avoidable. Examples are the 2010 Listeria outbreak linked to cheese, which led to 8 deaths in Austria and Germany, and the EHEC catastrophe in the spring of 2011, which killed a total of 53 people in Germany.<sup>11</sup> Moreover, the classic risks have been replaced by new kinds of hazards: e.g. toxic substances like dioxins and furans, which are not acutely toxic in small amounts but have long-term carcinogenic and mutagenic effects, as well as a vast number of pesticide and veterinary drug residues, including their metabolites. And there are also the indirect risks, such as overweight, obesity and diabetes, which are caused by an unbalanced diet of highly processed, energy-dense foods.

#### EXAMPLES OF INADEQUATE HEALTH PROTECTION IN LEGAL PRACTICE:

In spite of the high level of health protection in the principal food law (see Section 1), there are serious shortcomings in how the law is applied. The following examples – by no means exhaustive – illustrate the inadequate provision of health protection for consumers.

#### >> Food additives associated with controversial health and safety issues:

About half of the roughly 320 food additives that have been approved in the EU in accordance with Regulation (EC) No. 1333/2008 on food additives are controversial with respect to their health effects.<sup>12</sup> Food additives are being used in spite of potential negative health effects. The rules only require such additives to be identified by means of a warning on the package (e.g. azo dyes [E 102, 110, 122, 124a and 129] and Quinoline Yellow [E 104], which are suspected of contributing to ADHD [attention deficit hyperactivity disorder]). The pre-

<sup>8</sup> See Sabine Schlacke, „Rechtliche Möglichkeiten und Grenzen der Angabe von Nährwerten durch eine Ampelkennzeichnung” („Legal possibilities and limitations of the ‚traffic-light’ system for labelling nutritional values”) in the context of the EU Commission regulation proposal COM (2008) 40 final; expert report commissioned by foodwatch, Berlin, 2009 [http://www.foodwatch.org/uploads/media/Rechtsgutachten\\_Ampel\\_Schlacke\\_20090717.pdf](http://www.foodwatch.org/uploads/media/Rechtsgutachten_Ampel_Schlacke_20090717.pdf) (German) (31.10.2012).

<sup>9</sup> See Section 3, re: German Food Code Commission; the European regulation on font size shall enter into force in 2015.

<sup>10</sup> Jürgen Abraham, who was chairman of the Federation of German Food and Drink Industries (BVE) at the time of the article's publication, in: „Qualität ist in aller Munde”, Consumers' Choice '11 (publication of the BVE on the occasion of Anuga 2011), p. 5.

<sup>11</sup> See foodwatch website, [http://www.foodwatch.org/de/informieren/informationsgesetz/aktuelle-nachrichten/bakterien-kaese-foodwatch-stellt-strafanzeige/?sword\\_listBOD=Listerien&sword\\_listB1D=Strafanzeige](http://www.foodwatch.org/de/informieren/informationsgesetz/aktuelle-nachrichten/bakterien-kaese-foodwatch-stellt-strafanzeige/?sword_listBOD=Listerien&sword_listB1D=Strafanzeige) (German), Berlin, 2010 (31.10.2012). See foodwatch EHEC report „Im Bockshorn – Die EHEC-Krise im Frühsommer 2011” („In the Seeds – The EHEC Crisis in the Spring of 2011”), Berlin, 2012 [http://www.foodwatch.org/fileadmin/Themen/EHEC/2012-05-04ImBockshorn\\_DieEHEC-Krise2011\\_foodwatch-Analyse\\_ger.pdf](http://www.foodwatch.org/fileadmin/Themen/EHEC/2012-05-04ImBockshorn_DieEHEC-Krise2011_foodwatch-Analyse_ger.pdf) (German) (31.10.2012).

<sup>12</sup> See Consumer Centre of Hamburg (VZHH), „Was bedeuten die E-Nummern?” („What do the E numbers mean?”), January 2011.

cautionary principle enshrined in the General Food Law Regulation implies a reversal of the burden of proof: i.e. instead of the critics bearing the burden of proving that an additive is harmful, the responsibility is placed on the manufacturer or distributor to prove that it is safe. The approval process for new substances, however, does not apply this principle consistently, in spite of the fact that the application of the precautionary principle is actually provided for in the European regulation on food additives.<sup>13</sup> In legal practice, therefore even food additives associated with scientific evidence of potential adverse health effects are actually being authorised for use – as is illustrated by the approval of azo dyes.<sup>14</sup>

>> **Health risks associated with contaminated feed:<sup>15</sup>**

Many major food scandals arise from animal feed scandals (BSE, nitrofen, dioxin). The legal regime of animal feedstuffs in the EU is incapable of protecting consumers from risks. For compound feed companies, for example, there is very little risk associated with the illegal practice of using non-contaminated feedstuffs for mixing, or „blending down”, feedstuffs with excessive levels of dioxin in order to reduce the level of dioxin contamination of the final product to below the permitted maximum limit (violation of the ban on dilution).

>> **Inadequate protection from toxins (e.g. pesticides, dioxins, uranium) and contaminants (e.g. acrylamide) owing to excessively high or non-existent limits:**

The existing dioxin limits in the EU are too high to achieve the Europe-wide aim of reducing the average level of contamination from 2 pg/kg of body weight to 1 pg/kg of body weight.<sup>16</sup> The recommended maximum concentration for uranium in mineral waters and the maximum contaminant level for uranium in drinking water are also too high.<sup>17</sup> The acrylamide content in starchy foods is not being systematically reduced to a level in line with „best possible practice”; instead, the so-called „indicative values” that manufacturers are not supposed to exceed were set to reflect the highest measured values.<sup>18</sup>

The existing limits for pesticides are also unnecessarily high and could be significantly lowered, as is demonstrated by the voluntary commitments of large retail chains<sup>19</sup> and the fact that the limits have generally

been relaxed in the course of European harmonisation. The setting of limits (e.g. dioxin), like the approval of additives, is based less on health protection and more on commercial considerations. For example, dioxin limits are set high enough to avoid having to take any products off the market. (The limit for dioxins in fish oil is many times higher than the limit for other fats or oils for the simple reason that fish oil typically contains high levels of these contaminants.)<sup>20</sup>

>> **Antibiotic resistance in humans:**

The legal practices predominantly used in veterinary medicine in Europe/Germany<sup>21</sup> are associated with an excessive and inadequately controlled use of antibiotics, which leads to antibiotic resistance and thereby to serious problems in the treatment of bacterial infections in human medicine. These risks cannot be effectively prevented by simply improving the management techniques used for the medication of farm animals; instead, a fundamental change is required in the permissible methods of livestock farming.<sup>22</sup>

>> **Bacterial contamination of fruit/vegetables:**

The EHEC crisis in the spring of 2011 demonstrated that a bacterial infection of seemingly healthy foods (like raw fruit and vegetables) can cause a large number of deaths. By the time the corrective measures of the government agencies had been applied to control the infection, the wave of the outbreak – as it turned out – had already subsided. The slow response of the government agencies was due in part to the unsatisfactory implementation of the requirements for traceability. The source of the infection, a horticultural farm in Lower Saxony that produced bean sprouts, could have been identified sooner if there had been an effective traceability system in place throughout the production and consumption chain.<sup>23</sup>

>> **Hygiene risks from rotten meat:**

The statutory regulations that are in place to prevent animal by-products from being diverted from the disposal route back into the food chain („Gammelfleisch”) are inadequate. Category 3 animal by-products, unlike Category 1 and 2 by-products, are not subject to any disposal regulations coupled with official monitoring and do not have to be marked with special stains to prevent their improper use.<sup>24</sup>

<sup>13</sup> See Commission Regulation (EC) No. 1333/2008.

<sup>14</sup> See Commission Regulation (EC) No. 1333/2008; see Section 1.2, fn. 4.

<sup>15</sup> See foodwatch's animal feed report „Lug und Trog” (German), Berlin, 2005,

[http://www.foodwatch.org/uploads/media/foodwatch\\_Futtermittelreport\\_komplett\\_0405.pdf](http://www.foodwatch.org/uploads/media/foodwatch_Futtermittelreport_komplett_0405.pdf) (31.10.2012)

See foodwatch report „The smuggling of carcass meal”, Berlin, 2007, [https://www.foodwatch.nl/foodwatch-nl/foodwatch/content/e36/e13710/e31987/e32115/downloadtabs32122/categories14477/files14480/foodwatch\\_report\\_the\\_smuggling\\_of\\_carcass\\_meal\\_070307\\_ger.pdf](https://www.foodwatch.nl/foodwatch-nl/foodwatch/content/e36/e13710/e31987/e32115/downloadtabs32122/categories14477/files14480/foodwatch_report_the_smuggling_of_carcass_meal_070307_ger.pdf) (31.10.2012).

<sup>16</sup> See foodwatch website, <http://www.foodwatch.org/de/informieren/dioxine-und-pcb/aktuelle-nachrichten/eu-erlaubt-noch-mehr-dioxin-im-fisch/> (German), (10.02.2014).

<sup>17</sup> See foodwatch website, <http://www.foodwatch.org/de/informieren/uran-im-wasser/mehr-zum-thema/grenzwertdebatte/> (German) (10.02.2014).

<sup>18</sup> See foodwatch website, <http://www.foodwatch.org/de/informieren/acrylamid/mehr-zum-thema/foodwatch-forderungen/> (German) (30.04.2013).

<sup>19</sup> See <http://www.welt.de/wirtschaft/article971514/Warum-Lidl-sich-Greenpeace-unterworfen-hat.html> (German) (31.10.2012).

<sup>20</sup> See foodwatch website, [http://foodwatch.de/kampagnen\\_themen/dioxine\\_und\\_pcb/nachrichten/21042008/index\\_ger.html](http://foodwatch.de/kampagnen_themen/dioxine_und_pcb/nachrichten/21042008/index_ger.html) (German), Berlin, 2008 (31.10.2012).

<sup>21</sup> Medicinal Products Act in the version published on 12 December 2005 (Federal Law Gazette Part I, p. 3394), last amended by Article 1 of the Law of 19 July 2011 (Federal Law Gazette Part I, p. 1398).

<sup>22</sup> See foodwatch website, <http://www.foodwatch.org/en/what-we-do/topics/livestock-farming/>, Berlin, 2012 (31.10.2012)

<sup>23</sup> See foodwatch EHEC report, loc. cit. The fact that the infection was able to spread at all was due in part to a lack of adequate hygiene and monitoring standards for sensitive fresh fruit and vegetables.

<sup>24</sup> See foodwatch website, <http://www.foodwatch.org/de/informieren/bse-und-tiermehl/> (German), Berlin, 2010 (31.10.2012). However, now a colourless and odourless agent is being used for Category 1 and 2 animal by-products instead of the visible colouring originally planned.



**>> Hygiene risks in food businesses:**

The percentage of failed inspections associated with hygiene risks in food businesses (e.g. restaurants, butcher shops) has been consistently high for many years and documents potential health hazards for customers.<sup>25</sup>

**>> Risks associated with nutritionally unbalanced diets:**

Processed foods are often too high in salt, fat and/or sugar and contribute to nutritional deficiency. Owing to the incomprehensible and often misleading mandatory labelling system for these nutrients, consumers are unable at a glance to understand and compare the actual nutrient contents of products. The Guideline Daily Amount (GDA) labelling system developed by the food industry does not make it easier for consumers to compare levels of fat, sugar and salt in similar foods, but instead even complicates this comparison.<sup>26</sup> The widespread availability of nutritionally unbalanced foods contributes to overweight and obesity. In Germany, the health costs from diet-related diseases amount to approx. 70 billion euros a year.

**>> Risks associated with inadequate protection from nuclear radiation:**

If Europe were to experience a nuclear accident that resulted in excessively high levels of radioactive contamination in food, the population would be exposed to major health risks. The valid radiation protection limits in Europe do not meet the requirements of a preventive health protection system and are far less strict than the currently valid standards in Japan.<sup>27</sup>

**>> Risks associated with the global trade in food:**

As is illustrated by the annual statistics from the German Federal Office of Consumer Protection and Food Safety (BVL), products with levels of pesticide residues exceeding the allowable limits are found regularly, especially in fruit and vegetables imported from third countries.<sup>28</sup> And pesticide residues are not the only type of contamination commonly seen in globally traded food.<sup>29</sup>

<sup>25</sup> In October 2012 the scandal surrounding the Vinzenzmurr butcher-shop chain in Bavaria was a good example of how long the authorities can tolerate unacceptable hygiene conditions and keep them secret from the public. See foodwatch website, <http://www.foodwatch.org/de/presse/pressemitteilungen/pressestatement-foodwatch-zu-den-hygiene-maengeln-bei-der-grossmetzgerei-vinzenzmurr/> (German) (31.10.2012); see „Von Maden und Mäusen“ („Of Maggots and Mice“), foodwatch-Report 12/2013 [http://www.foodwatch.org/uploads/media/2013-12-12\\_foodwatch-Report\\_Lebensmittellueberwachung.pdf](http://www.foodwatch.org/uploads/media/2013-12-12_foodwatch-Report_Lebensmittellueberwachung.pdf) (German) (20.12.2013).

<sup>26</sup> See foodwatch website, <http://www.foodwatch.org/de/informieren/ampelkennzeichnung/mehr-zum-thema/industrie-kennzeichnung-gda/> (German), (31.10.2012).

<sup>27</sup> See foodwatch report „Calculated Fatalities from Radiation – Officially Permissible Limits for Radioactively Contaminated Food in the European Union and Japan“, Berlin, 2011, <http://www.foodwatch.org/en/what-we-do/topics/radiation/more-information/foodwatch-report-calculated-fatalities-from-radiation/> (31.10.2012).

<sup>28</sup> Federal Office of Consumer Protection and Food Safety (BVL), control and inspection programmes, analyses and reports on pesticide residues in food, quarterly analyses, [http://www.bvl.bund.de/EN/01\\_Food/05\\_LM\\_Monitoring\\_en/LM\\_Monitoring\\_EN\\_node.html](http://www.bvl.bund.de/EN/01_Food/05_LM_Monitoring_en/LM_Monitoring_EN_node.html) (31.10.2012).

<sup>29</sup> In China, milk powder contaminated with melamine killed six babies and made 300,000 ill in 2008. Melamine-tainted products were also found in Germany. See <http://www.sueddeutsche.de/panorama/milchskandal-in-china-zum-machter-halt-sollen-koepfe-rolen-1.474018> (German), (2008); contaminated frozen strawberries from China were recently (10/2012) the cause of food poisoning that sickened more than 11,000 schoolchildren in eastern Germany, see foodwatch website, <http://www.foodwatch.org/de/informieren/smile-system/aktuelle-nachrichten/kontrollergebnisse-fuer-schulkantinen-veroeffentlichen/> (German), Berlin, 2012 (31.10.2012).

**2.2. INADEQUATE FRAUD PREVENTION**

Consumer fraud and deception in the manufacturing and marketing of food are the order of the day – both on the large and small scale. In February 2013 the „horsemeat scandal“ shocked consumers throughout Europe. Lasagne and other finished products that had been labelled and distributed as beef products were found to contain horsemeat in varying quantities. According to official sources, at least 750 tonnes of horsemeat had been mixed into more expensive meat products, enabling manufacturers and retailers to significantly increase their profits through unlawful means. Horsemeat was found not only in products from medium-sized and small companies but also in private-label products from major retailers, such as Kaiser’s Tengelmann, Rewe, Aldi and others.<sup>30</sup>

Consumers in Germany were also deceived on a grand scale by the mislabelling of eggs. The case came to light in February 2013. Several million eggs from hens living in conditions that did not conform to organic regulations were sold to consumers as organic eggs, and eggs laid by battery hens were sold as free range. Apparently, consumers were even being deceived with free-range and barn eggs: barns had been stocked at a density that greatly exceeded the applicable limits (number of animals per square metre of floor space).

The annual reports prepared by the Federal Office of Consumer Protection and Food Safety (BVL) document that minor violations involving deception and fraud – i.e. „minor“ in comparison to the horsemeat scandal – are widespread. About 15 per cent of all cases of non-compliance identified through food controls involve false declaration.<sup>31</sup> Most commonly, cases of false declaration involve unpackaged food products and food sold in restaurants. Well-known examples are the so-called „cheese analogues“, meaning cheeses derived from vegetable sources that are sold as real cheese on pizzas, and „imitation hams“, i.e. ham products that are not „real“ ham in accordance with the requirements laid down in food law, but instead „cured meats“ with an excessively high water content, or even „glued ham“ mislabelled as genuine ham.<sup>32</sup>

<sup>30</sup> See foodwatch website, <http://www.foodwatch.org/de/informieren/pferdefleisch/mehr-zum-thema/uebersicht-ueber-den-pferdefleisch-skandal/> (German) (30.04.2013).

<sup>31</sup> See annual reports from the German Federal Office of Consumer Protection and Food Safety (BVL), [http://www.bvl.bund.de/DE/08\\_PressInfothek/04\\_Publikationen/03\\_Berichte/infothek\\_berichte\\_node.html](http://www.bvl.bund.de/DE/08_PressInfothek/04_Publikationen/03_Berichte/infothek_berichte_node.html) (29.11.2013).

<sup>32</sup> See foodwatch website, <http://www.foodwatch.org/de/informieren/werbeluegen/mehr-zum-thema/hintergrund/> (German), Berlin, 2009 (31.10.2012).

**Examples of „legal fraudulent labelling“:<sup>33</sup>**

- >> There is also the phenomenon of so-called „legal fraudulent labelling“: product packaging, product names or product identity statements that are not legally objectionable but nevertheless mislead consumers. In foodwatch’s view, „legal fraudulent labelling“ represents a major problem: it prevents consumers from being able to quickly, easily and accurately assess and compare the quality of products. Therefore „legal fraudulent labelling“ is also one of the reasons why, on the market, there is less of a quality competition than a price competition – to the detriment of the suppliers of genuinely high-quality products. Examples: a food can be sold with the claim „no flavour enhancers“ even if it is made with „yeast extract“, which contains the flavour-enhancing substance glutamic acid. According to the German Food Additives Authorisation Ordinance (ZZuV), yeast extract is not an additive subject to mandatory declaration, but an ingredient.
- >> The nutrition labelling scheme based on GDAs (Guideline Daily Amounts), a reference value for daily energy and nutrient intake invented by the industry, makes it possible to obscure the actual nutritional content by declaring levels of nutrients in various portion sizes.<sup>34</sup> Furthermore, the system implies that humans have a daily requirement for sugar. Such a requirement does not exist. In fact, the GDA value is based on a maximum level of intake that, according to the World Health Organisation (WHO), should not be exceeded (no more than 10% of a person’s daily energy intake should come from added sugar).
- >> The Nutrition and Health Claims Regulation (NHCR), which came into effect in 2012, sets out a legal framework regulating the use of nutrition and health claims in product advertising. The original intention of the regulation was to prohibit the use of such claims for any food with an undesirable nutrient profile. However, the food industry succeeded in overturning this condition. As a result, products that should not be regular part of a healthy, balanced diet can now be marketed using claims about positive health effects, especially through the addition of vitamins.<sup>35</sup>
- >> The „Protected Geographical Indication“ (PGI) status awarded to products under EU law as a designation of origin is misleading: even if the meat used for making a Black Forest ham product does not come from the Black Forest region of Germany, the product can be legally declared as „produced exclusively in the Black Forest“.

- >> The „natural flavouring“ referenced on a label for strawberry yoghurt may have nothing to do with strawberries. A substance can be referred to as a „natural flavouring“ even if it is not produced from the specified fruit but instead derived from another substance that is naturally present and has been identified in nature.
- >> Food retailing: high-oxygen modified atmosphere packaging (MAP) makes meat look fresher and higher in quality than it actually is.<sup>36</sup>
- >> Large images of fruit can be used on fruit tea packages even if the tea contains neither the fruit itself nor flavourings derived from the fruit.

The fact that consumers feel deceived by what are usually legal forms of product information, presentation and packaging has since been well documented, and not only by foodwatch’s „abgespeist“ campaign and the associated foodwatch surveys. Further evidence of this widespread deception is the recent creation of a new German Internet platform for improving clarity with regard to food products („Lebensmittelklarheit“). This platform is operated by the Federation of German Consumer Organisations (vzbv) and funded by the German federal government with the declared aim of supporting „...consumers who feel deceived by product presentation or advertising practices, by providing them with general information on labelling, answering questions about specific products and offering a forum for discussion.“<sup>37</sup>

And finally, even a survey commissioned by the food industry itself has revealed that consumers feel unable to assess the quality of foods – and, as a result, have also grown to mistrust the food industry to a great extent. According to this survey, about 80% of consumers report experiencing difficulties in assessing the quality of foods.<sup>38</sup>

<sup>33</sup> Since 2007 foodwatch has been documenting cases of deception in the supermarket through regular reports and articles on its Internet platform [www.abgespeist.de](http://www.abgespeist.de). See foodwatch website, [www.abgespeist.de](http://www.abgespeist.de) (German) (31.10.2012).

<sup>34</sup> See foodwatch website, <http://www.foodwatch.org/en/what-we-do/topics/traffic-light-labels/more-information/the-industry-model-gda/>, Berlin, 2009 (31.10.2012).

<sup>35</sup> See foodwatch website, <http://www.foodwatch.org/de/informieren/gesundheitswerbung/2-minuten-info/> (German), Berlin, 2013 (17.12.2013).

<sup>36</sup> See foodwatch website, [http://foodwatch.de/kampagnen\\_themen/fleisch\\_in\\_schutzatmosphaere/index\\_ger.html](http://foodwatch.de/kampagnen_themen/fleisch_in_schutzatmosphaere/index_ger.html) (German), Berlin, 2008 (31.10.2012).

<sup>37</sup> See website of the Federation of German Consumer Organisations, [www.lebensmittelklarheit.de](http://www.lebensmittelklarheit.de) (German) (31.10.2012).

<sup>38</sup> Juergen Abraham, p. 7.

## LEGAL SHORTCOMINGS OF HEALTH-PROTECTION AND FRAUD-PREVENTION POLICIES

The shortcomings of health-protection and fraud-prevention policies are the result of food laws and regulations with inadequate requirements in these areas. However, the consumers' right to health protection is also undermined by shortcomings in other branches of law that are relevant to the effective implementation of health-protection and fraud-prevention policies (criminal law, liability law, information law), as well as by the organisation of official food controls.

### Substantive regulatory shortcomings

The vast majority of the substantive rules and regulations aimed at guaranteeing health protection or fraud prevention are inadequate. These include, for example, the regulation on food additives, the regulation on food flavourings, the regulations on mandatory testing for animal feeds and the disposal of animal by-products, the standards for animal welfare, the regulations on establishing limits for contaminants, toxins and the radioactive contamination of food, and the product information regulation, in particular the requirements for labelling nutritional values in processed foods and for origin-labelling.

### Inadequate information rights for consumers/information obligations for government agencies/companies

Transparency with respect to the characteristics and production of foodstuffs enables consumers not only to protect themselves from misleading and deceptive practices but also to avoid health risks. Transparency requirements constitute a relatively minor infringement on the property rights of companies and ensure the efficient self-regulation of the market.<sup>39</sup>

In practice, however, consumers still do not have the right to quickly and promptly ascertain the name of the manufacturers and retailers of high-risk products. Government agencies use long, drawn-out procedures to delay, for example, the disclosure of information on violations of the law, and as a result the required „timeliness” of this information cannot be guaranteed.<sup>40</sup>

The information obligations for government agencies with respect to food-related health hazards are still inadequate. For example, there is no automatic publication of notifications from the European Rapid Alert System for Food and Feed (RASFF) specifying the name of the responsible party. Information obligations for government agencies with respect to hygiene-related risks in

food establishments are too lax. The introduction of the „Smiley System” in Germany, which foodwatch is calling for, has been politically hindered for years. Furthermore, the horsemeat scandal and the egg-mislabelling scandal have demonstrated that there are no effective policies requiring government agencies and companies to inform consumers in a timely manner about fraudulent/deceptive products.<sup>41</sup>

Not only are the health claims used in product marketing – i.e. references to allegedly positive health benefits – misleading, in that the actual health effects are questionable; they can even pose health risks. Specific health claims from manufacturers must be approved by the European Food Safety Authority (EFSA) (e.g. the claim „lowers cholesterol”). However, the approval of such claims by EFSA does not mean that the claimed health effect is adequate for preventive health protection (e.g. the margarine „Becel pro.activ” may lower cholesterol levels, but whether it contributes to the prevention of coronary heart disease is questionable; in fact, studies suggest that the active ingredient in this product may even promote disease, and especially heart disease).<sup>42</sup> Furthermore, all of these health claims only refer to individual substances (e.g. vitamins or minerals). Many manufacturers add these substances to nutritionally unbalanced (e.g. high-sugar and/or high-fat) products for the primary purpose of being able to market them as „healthy”.<sup>43</sup>

### Asymmetrical protection for companies and consumers in the enforcement of their fundamental rights

If companies feel that certain government measures are illegally interfering with their fundamental rights (particularly their right of ownership of private property and freedom of occupation), it is possible for them to use legal means and, in individual cases, force a high-court decision (all the way to the European Court of Justice – ECJ). This applies not only to health protection but also to fraud prevention. Consumers, on the other hand, have hardly any effective options for directly or indirectly enforcing their fundamental rights against food companies (for example, via civil law or the law of administrative offences), not least because of the above-mentioned difficulties in proving causality between a health hazard and the respective injury. Consumers would only have an advantage over companies, for example, if consumer organisations were given the right to bring legal action, both at national and EU level. The rights of consumer organisations to bring collective actions at national and European level are absolutely essential for creating an „equality of arms” between consumers and companies.

<sup>39</sup> See Thilo Bode, „Wo bleiben die Verbraucherrechte?” („What's Happened to Consumer Rights?”), *Zeitschrift für Rechtspolitik (ZRP)*, 3/2006.

<sup>40</sup> See foodwatch report „abschrecken, abservieren, abkassieren” („scare off, walk over, cash up”), Berlin, 2008. [http://www.foodwatch.org/uploads/media/foodwatch-Report\\_Praxistest-VIG\\_05.12.2008.pdf](http://www.foodwatch.org/uploads/media/foodwatch-Report_Praxistest-VIG_05.12.2008.pdf) (German) (31.10.2012).

<sup>41</sup> See foodwatch report „Von Maden und Mäusen” („Of Maggots and Mice”), Berlin, 2013 [http://www.foodwatch.org/uploads/media/2013-12-12\\_foodwatch-Report\\_Lebensmittelueberwachung.pdf](http://www.foodwatch.org/uploads/media/2013-12-12_foodwatch-Report_Lebensmittelueberwachung.pdf) (German) (17.12.2013).

The Smiley System provides for a publication of the results from public food-inspection visits, including a summarised Smiley rating on the website and on the door of every food establishment. See also sub-item „Toothless food controls” in this section.

<sup>42</sup> See foodwatch website, [http://www.abgespeist.de/becel\\_proactiv/index\\_ger.html](http://www.abgespeist.de/becel_proactiv/index_ger.html) (German), Berlin, 2011 (31.10.2012).

<sup>43</sup> See Section 2.2 and fn. 33.

### **Criminal law and the law of administrative offences – minor deterrents**

Penalties/fines have practically no deterrent effect, because breaches of food law (e.g. contamination of feedstuffs) are difficult to prove. Clear causal links between health damages and contaminated food can rarely be established. In particular, it is very difficult to prove intent or guilt in criminal law, or individual responsibility in the law of administrative offences (Section 12 of the German Administrative Offences Act – OWiG). This situation is exacerbated by the fact that administrative provisions (e.g. the absence of mandatory testing for all animal feed batches, which foodwatch is calling for) are not worded in such a way that, for example, intent can be proved beyond a reasonable doubt. Furthermore, Section 44 Para. 6 of the German Food and Feed Code (LFGB) („ban on the use of disclosed information”) protects feed manufacturers from investigations by the public prosecutor’s office even if they voluntarily report a case of contamination to the government agencies after the contaminated feed has already been sold and fed to farm animals.<sup>44</sup>

This means that, in feed law, manufacturers practically have an incentive not to act preventively but instead to hope that either the contamination will not be discovered or they will enjoy impunity owing to the lack of testing requirements, by invoking the ban on the use of disclosed information.<sup>45</sup> A similar situation was seen in the horsemeat scandal. Although the mislabelled products were even sold by large retail chains as private-label products, it cannot be proved that the chains acted with wilful intent or gross negligence because there are no special verification obligations imposed by law.<sup>46</sup>

Another reason for the ineffectiveness of fines as deterrents is that government agencies have no obligation to investigate administrative offences (the so-called „opportunity principle”, see Sect. 47 Para. 1 of the OWiG). This situation also makes it more difficult to take action against breaches of supervisory duties (Sect. 130 OWiG) or to impose a fine on the company („small business penalty”, Sect. 30 OWiG). As a result, the majority of legal proceedings involving administrative fines (i.e. for administrative offences) come to nothing.

Compounding the problem is the fact that, in food law – as in the prosecution of criminal economic offences in general – Germany (unlike, for example, Austria or France) has no „corporate criminal liability laws”.<sup>47</sup> Instead, individual culpability must be established. Significant fines can only be imposed on

companies in the context of the OWiG/small business penalties (see above) under certain conditions.<sup>48</sup>

### **Rights of action: largely ineffective**

The difficulty in proving a causal relationship between damage to health and contaminated food is also a major reason why consumers so rarely use legal action to defend themselves from health hazards or health injury. A reversal of the burden of proof in such cases in which the manufacturer has violated existing legal provisions would significantly strengthen the rights of consumers. Then, it would no longer be up to the consumer to prove that the manufacturer’s unlawful action caused the adverse health effects. Instead, the manufacturer would have to prove that the consumer’s health was not damaged by the illegally produced foodstuff.

Lawsuits brought by consumers alleging fraudulent/deceptive business practices are also largely ineffective. On the basis of the German Unfair Competition Act (UWG), lawsuits for unfair business practices can be filed by consumer organisations, like foodwatch or the Federation of German Consumer Organisations (vzbv), as well as a company’s competitor. However, this instrument does not suffice to actually remedy the situation. Considering the large number of violations, consumer organisations have little chance of actually changing the market by filing lawsuits for unfair competition. Therefore, it will never go beyond example-setting intervention in individual cases. Deception is profitable for companies because fines are rarely imposed or are simply not high enough to serve as effective deterrents. Individual consumers can also file lawsuits against companies if they suspect deceptive business practices. However, in this case, the lawsuit is carried out in the context of a bilateral contractual relationship between the manufacturer/retailer and the consumer. Manufacturers/retailers can withdraw from the contract and reimburse the consumer for the purchase price paid. Then the case is settled. A conviction in an individual case has no validity (legal effect) for identical violations involving other consumers.

### **Civil law: minimal liability risks for manufacturers/retailers**

In practice, consumers cannot hold manufacturers/retailers responsible for health damages because a liability action is only successful if causation can be established between the consumed food and the health damage. This is almost impossible because a direct causal link is very difficult to prove in cases involving foodstuffs (see above). In addition, wilful intent or negligence

<sup>44</sup> See foodwatch’s dioxin report „Chronisch vergiftet“ („Chronically poisoned“), Berlin, 2011, [http://www.foodwatch.org/uploads/media/Chronischvergiftet\\_foodwatch-Report2011-12-12\\_02.pdf](http://www.foodwatch.org/uploads/media/Chronischvergiftet_foodwatch-Report2011-12-12_02.pdf) (German) (31.10.2012)  
See Cornelius Knappmann-Korn, short expert report commissioned by foodwatch regarding the ban on the use of disclosed information, (unpublished, Berlin, 2012).

<sup>45</sup> This, for example, is the reason why the public prosecutor’s office was unable to bring a case against the parties responsible for the large-scale dioxin scandal of 2010 for placing hazardous feedstuffs on the market. The responsible parties were able to talk their way out of it by explaining they hadn’t known that the industrial fats they had used for producing their compound feeds were contaminated with dioxin. See press release from the public prosecutor’s office in Itzehoe dated 15.03.2013.

<sup>46</sup> See foodwatch website: <http://www.foodwatch.org/en/what-we-do/topics/horsemeat-scandal/2-minute-info/> (21.02.2013).

<sup>47</sup> In May 2013 the German federal state of North Rhine-Westphalia presented a draft for a corporate criminal liability law. Whether and in what form this draft code will ultimately be introduced in Germany remains unclear (as of November 2013). See also: [http://www.justiz.nrw.de/JM/Presse/PresseJM/archiv/2013\\_02\\_Archiv/2013\\_11\\_14\\_PM\\_Unternehmensstrafrecht\\_JuMiKo/index.php](http://www.justiz.nrw.de/JM/Presse/PresseJM/archiv/2013_02_Archiv/2013_11_14_PM_Unternehmensstrafrecht_JuMiKo/index.php) (17.02.2014).

<sup>48</sup> See foodwatch website: [http://www.foodwatch.org/de/informieren/informationsgesetz/aktuelle-nachrichten/lidl-zahl-millionen-strafe-nach-toedlichem-listerienfall/?sword\\_list\[0\]=listerien](http://www.foodwatch.org/de/informieren/informationsgesetz/aktuelle-nachrichten/lidl-zahl-millionen-strafe-nach-toedlichem-listerienfall/?sword_list[0]=listerien) (German) (30.4.2013).



would have to be established. The civil liability of manufacturers/retailers for fraudulent offences is negligible. It amounts to the return of the mislabelled product (which has usually already been consumed) and the reimbursement of the purchase price.

#### **Lack of product accountability of importers and retail businesses**

The current legal framework allows retail businesses and importers to plead ignorance in cases of fraudulent offences or health risks. Specific verification obligations backed by penalties for offences would increase the accountability of retail businesses for their products. If retail businesses were required to verify the quality of their private-label products, they would no longer be able to avoid accountability – as was the case in the horsemeat scandal, when businesses claimed that they had not known anything about the use of horsemeat instead of beef (no wilful intent) and had not had any reason for suspicion (no negligence). The same applies to health protection. The appropriate verification obligations for retailers/importers would be an effective means of reducing, for example, the number of products chronically exceeding the residue limits for pesticides.

#### **Toothless food controls**

Food controls are not effective enough because the powers and competences are generally spread out over various levels of state administration (enforcement usually at local level) instead of being centralised at a federal state authority. Furthermore, the authorities sometimes lack the necessary personnel and/or equipment, and the administrative measures taken are lengthy, and therefore often ineffective. The conflicts between economic interests (jobs, tax revenue) and consumer interests at the local level often prevent local authorities from taking effective action against wrongdoing. In practice, authorities often tolerate scandalous abuses for years before the public is finally informed.<sup>49</sup>

Food controls have a fundamentally remedial character. The idea that (more) controls alone could motivate manufacturers/retailers to act preventively with respect to health protection and fraud prevention is not very realistic. Effective disincentives are also necessary for preventing infringements. More precisely, the only way to effectively prevent infringements is to require that all results of official food-safety inspections be published, with the corresponding ratings posted both in the Internet and on the door of the respective food establishment, using a „Smiley System”.<sup>50</sup>

Furthermore, food controls can only achieve genuine effectiveness if they are based on penalty-backed, statutory obligations requiring companies to carry out self-monitoring and verification.

#### **National law-making: the German Food Code Commission promotes legal fraudulent labelling**

The German Food Code Commission (DLMBK) is a committee appointed by the federal government to formulate guidelines and identity statements for food products. The guidelines and product identity statements are supposed to reflect the „likely understanding of the average consumer”. Although the Commission’s guidelines do not constitute legal requirements, they are treated as expert opinion in legal proceedings and can therefore be regarded as having a de facto binding effect, which, in the end, does not differ greatly from the effect of a legal requirement. However, the composition and workings of the German Food Code Commission are organised in such a way that consumer interests are often unable to assert themselves. Superficially, the Commission is composed of an equal number of representatives from the scientific community, food control authorities, food industry and consumer interests. However, only 8 of the 32 members of the Commission are explicit consumer representatives (representatives of the consumer centres and the consumer organisation Verbraucher Initiative e.V.), meaning that they can be outvoted at any time, or consumer-friendly decisions can be blocked by the food industry and the other groups. Because the Commission always strives to make decisions by consensus, the representatives of the food industry have de facto veto power for each and every decision. Furthermore, representatives of the scientific community often have a particularly close relationship to the food industry. For example, it is generally difficult to find an impartial scientist who does not work for the food industry to serve as a court-appointed expert in legal proceedings. For these reasons, many of the guidelines developed by the German Food Code Commission are in no way consistent with the „likely understanding of the average consumer”. Example: according to the guidelines, a mirabelle-flavoured fruit tea is allowed to use the name „mirabelle” and show images of mirabelles on the packaging in spite of the fact that the product contains neither the fruit itself nor any flavouring derived from this fruit.<sup>51</sup>

<sup>49</sup> „In the case of the Bavarian industrial bakery Müller Brot, the authorities knew of serious hygiene deficiencies as early as March 2010. Between March 2010 and the exposure of the scandal, unsuspecting consumers purchased and consumed more than 640 million rolls and 45 million loaves of bread from Müller Brot while Bavarian officials were making repeated visits to the bakery production facilities, investigating mouse droppings and cockroaches. Now, the Bavarian officials are claiming that they were not able to inform the public. In fact, not only were they able to, they 'should' have explicitly in accordance with the current wording of the law. Nevertheless, they did not inform the public – and therefore did not use the margin of discretion associated with the word 'should' in the interest of consumers, but rather for the protection of the company Müller Brot.” See foodwatch website: <http://www.foodwatch.org/de/informieren/informationsgesetz/aktuelle-nachrichten/keine-informationspflichten-bei-gammelfleisch/> (German), Berlin, 2012 (31.10.2012).

<sup>50</sup> See foodwatch website, <http://www.foodwatch.org/de/informieren/smiley-system/2-minuten-info/> (German), Berlin, 2010 (31.10.2012).

<sup>51</sup> See, for example, the guidelines „Leitsätze für Tee, teeähnliche Erzeugnisse, deren Extrakte und Zubereitungen“ („Guidelines for tea, tea-like products, their extracts and preparations thereof”) from 02.12.1998, Federal Gazette BAnz. No. 66a from 09.04.1999.

### Democratic deficits of national and European law-making

In the broader sense, shortcomings in the implementation of consumer protection in food law are also the result of democratic deficits in both EU and national law that can act against the interest of consumers to the benefit of the industry and administration. Food law is European Union law. Owing to the lack of immediacy of the legislative procedure at European level in relation to the citizens of the Member States, these citizens can no longer exert effective democratic control over their elected representatives in order to enforce their interests.

The only democratic control that citizens are able to exercise over the EU legislature (the European Parliament, the Council of the European Union and the European Commission) is indirect, through elections for the European Parliament, which has no power to initiate laws and shares legislative power with the Council. As a result, representative democracy in decisions that directly affect the lives of citizens (e.g. food) is significantly weakened. In some cases, the amendment/further development of EU regulations has been taken from the control of the European Parliament, e.g. through implementing legislation (comitology procedures); as a result the EU administration performs significant legislative functions without adequate democratic control (e.g. the raising of dioxin limits for fish liver was decided by the „Standing Committee on the Food Chain and Animal Health”, a committee made up of representatives of the European Commission and delegates from national authorities).<sup>52</sup>

The legislative measures taken by the German federal government in response to the cases of excessively high dioxin levels that were discovered in the winter of 2010/2011 revealed democratic deficits both in the implementation with respect to EU law and in the context of national law. Decisions that were significant in terms of their far-reaching implications for health protection, such as the issue of whether there should be mandatory testing for all feed batches, have been made with neither parliamentary oversight nor the consideration of consumer interests, and without communicating the necessary information to the public.<sup>53</sup>

The German Food Code Commission (see above), which sets guidelines for the identity statements used by food products, also lacks adequate democratic legitimacy. These guidelines effectively have standard-setting, legal character but are decided upon with no accountability to the parliament.

## LOBBY AGAINST PREVENTION

### 4.1. REMEDIAL INSTEAD OF PREVENTIVE CONSUMER PROTECTION

The numerous legal shortcomings of fraud prevention and health protection – be it in the verification obligations for feed manufacturers, the lack of concern regarding the potential health hazards associated with the widespread use of pesticide and animal-drug cocktails, the authorisation of additives or the setting of limits – have one key consequence: the health of consumers is being gambled with on a daily basis, instead of being protected through preventive measures. Consumers are also not being protected from fraud through preventive means. Instead, consumer fraud is a daily phenomenon of food law. Most violations of fraud-prevention and health-protection provisions in the food market are irreversible because, as a rule, the *corpus delicti* has already been consumed: the product cannot be exchanged, damage is difficult to establish, and injuries to health cannot be subsequently attributed to the violation, let alone reversed. Thus, the regulatory framework would have to be shaped so as to ensure that there are effective incentives for companies and government agencies to avoid health hazards and fraud from the start, meaning preventively. In practice, however, market-regulation mechanisms do not act preventively.

A poignant example of this fact is feed law. Multiple shortcomings create a situation conducive to abuses. For example, instead of requiring companies to carry out preventive testing on all feed batches, provisions merely obligate companies to inform government agencies about cases of contamination after-the-fact. Furthermore the sanctions for infringements of the law are ineffective, and there is a low likelihood of identifying infringements. As a result, in practically all of the feed scandals that have surfaced to date, most of the contaminated material had already been fed to farm animals – and the foods produced from these farm animals had already been consumed by humans – by the time the case was discovered.

Owing to this situation, the food market is one in which consumers are not being protected from fraud and health hazards by preventive – i.e. effective – measures. In foodwatch’s opinion, the lack of preventive consumer-protection measures in the practice of food law constitutes a violation of the policies and principles of European food law, in which the precautionary principle – i.e. the prevention of risks for consumers – plays a central role.

<sup>52</sup> See Sabine Schlacke, expert report evaluating the weakening of the level of public protection from BSE risks since 2001 in the context of Regulation (EC) No. 1774/2002, especially from the perspective of the theory of democracy, (unpublished, 2011).

<sup>53</sup> See foodwatch’s dioxin report „Chronisch vergiftet“ („Chronically poisoned“), Berlin, 2011, [http://www.foodwatch.org/uploads/media/Chronischvergiftet\\_foodwatch-Report2011-12-12\\_02.pdf](http://www.foodwatch.org/uploads/media/Chronischvergiftet_foodwatch-Report2011-12-12_02.pdf) (German) (31.10.2012).

## 4.2. PREVENTION: COSTS FOR COMPANIES, SAVINGS FOR SOCIETY

The legal shortcomings with respect to health protection and fraud prevention are due to the inadequate implementation of the principles of primary and secondary legislation laid down in the umbrella laws for foodstuffs (e.g. the German Food and Feed Code and the EU General Food Law Regulation).

The introduction of the new German Food and Feed Code (LFGB) in 2005 is largely limited to the general formulation of protective regulations that are preventive in nature and could therefore have far-reaching impacts (see Section 1.2.). However, these regulations have not found expression in the extensive and also complex compendium of statutory rules that define the application of the principles of law in concrete terms. Not only has the principle of prevention enshrined in primary and secondary law not been consistently applied, but instead the entire regulatory framework has been created with a predominantly remedial character. The fundamental principles of European food law, namely the precautionary principle and the requirement for traceability, have not been adequately taken into consideration in the development of a concrete legal framework.

Furthermore, the precautionary principle and requirement for traceability can only be effectively implemented and enforced if, in related fields of law, supporting legislative measures are taken. This has not been achieved satisfactorily to date. Violations of food regulations are not being effectively prevented, and the penalties imposed do not provide a sufficiently strong deterrent. In addition, information rights for citizens, information obligations for government agencies/companies and provisions of criminal and civil law are not drawn up in such a way that they effectively support and complement the achievement of the objectives of food law (see Section 3).

This development of European food law is not accidental; nor did it result from any ignorance on the part of the legislature. Instead, it is the direct result of the food lobby's success in influencing the legislature. Preventive consumer protection, although beneficial for consumers and cost-saving for society, increases costs for the food industry and therefore constitutes a burden for each individual company.

For example, requiring feedstuff companies to test every batch of feed would, on the one hand, mean higher costs for the individual companies and could therefore endanger their viability; but on the other hand, these requirements would greatly reduce costs for society through the effective prevention of feed scandals. Furthermore, the mandatory testing of all feed batches would have a minimal, if any, effect on the final selling price of meat products. This is because the costs of animal feed account for only about 10–15% of the total meat-production costs in terms of the final retail-selling price. For a pork cutlet that sells for 8 Euro per kilogram in the supermarket, a 10% increase in the feed price would only amount to a barely noticeable additional cost of 12 cents per kilogram for the consumer.<sup>54</sup> Feed companies that are unable to shoulder the additional burden of stricter testing requirements and could therefore not guarantee sufficient safety would have to close; but from a market-economy perspective, the exit of these companies from the market constitutes an important and desirable weeding-out process.

However, the strong lobby of the feed industry, which is part of the farming lobby, is not focused on the interests of society and consumers. Instead, it represents each individual feed business, whose main objective is to avoid cost increases – regardless of the resulting costs to society. For this reason, precautionary measures for protecting consumers – in the field of animal feed as well as in the food sector – go against the interests of the food industry. It is not without significance that, in the shaping and implementation of the pioneering, preventive principles of food law, it was primarily the interests of the food industry that prevailed, and the state was incapable of opposing these interests.<sup>55</sup>

The political influence of the food industry is extensive. It manifests itself on all levels of legislation and law-making, including the control of foodstuffs. It even dominates the executive branch – especially in Germany, where the responsible ministry could be seen as a clientele ministry of the agricultural industry. Furthermore, the persistent preponderance of commercial interests at the expense of the legal protection of consumers is reflected not only in the personnel links that can be seen between the food industry and the formally independent state institutions for consumer protection, such as the German Federal Institute for Risk Assessment (BfR)<sup>56</sup>, but also in the dominance of the food industry in government-sponsored cooperative projects, like the German organisation „Platform Diet and Phy-

<sup>54</sup> See foodwatch's animal feed report „Lug und Trog“ (German), loc. cit.

<sup>55</sup> Two examples of how the food industry asserts itself, even against broad majorities of the population/consumers, are traffic-light labelling and the Smiley System. Eighty per cent of the German population wants these transparency regulations. Nevertheless, the state has not gone against the wishes of the food industry to implement the will of its citizens. See foodwatch website: Emnid: Ampel-Unterstützung wächst – Bürger für Öffnungsklausel (Emnid survey: Citizens want mandatory labelling) (2009) [http://www.foodwatch.org/de/informieren/ampelkennzeichnung/aktuelle-nachrichten/emnid-ampel-unterstuetzung-waechst-buerger-fuer-oeffnungsklausel/?sword\\_list\[0\]=emnid](http://www.foodwatch.org/de/informieren/ampelkennzeichnung/aktuelle-nachrichten/emnid-ampel-unterstuetzung-waechst-buerger-fuer-oeffnungsklausel/?sword_list[0]=emnid) (German).

See foodwatch website: Emnid-Umfrage: Riesenmehrheit für Smileys in Deutschland (Emnid survey: Vast majority in favour of Smileys in Germany) (04/2010) [http://www.foodwatch.org/de/informieren/smiley-system/mehr-zum-thema/emnid-umfrage/?sword\\_list\[0\]=emnid](http://www.foodwatch.org/de/informieren/smiley-system/mehr-zum-thema/emnid-umfrage/?sword_list[0]=emnid) (German).

<sup>56</sup> Christoph Then and Andreas Bauer-Panskus, „Schlecht beraten: Gentechnik-Lobbyisten dominieren Expertengremium – Schwere Interessenskonflikte beim Bundesinstitut für Risikobewertung (BfR)“ („Ill advised: genetic engineering lobbyists dominate panels of experts – severe conflicts of interests at the Federal Institute for Risk Assessment (BfR)“) (German), Munich, 2012.

sical Activity” (peb)<sup>57</sup>. This massive influence of the food industry on politics and government institutions exists not only in Germany but also at European level.

The state has not only failed to implement the fundamental principles of European food law, it has even reversed these principles. This fact is an illustration of how the state has surrendered and abandoned its mandate of governance to the interests of the food industry.

The BSE crisis allowed some insight and good intentions to return, but only for the short term. For a brief period of time, there was unanimity that a catastrophe like this should never happen again. This promise has not been kept. And the necessary measures have been blocked by the very groups who were responsible for the catastrophe in the first place.

## FROM CRISIS MANAGEMENT TO PREVENTION: LEGAL MEASURES

Up until very recently, the food industry had never had to deal with organised consumer interests. The state-funded consumer centres perform an important role by providing direct advice to consumers and fighting against food mislabelling (e.g. false declarations), e.g. by issuing warnings in accordance with the German Unfair Competition Act (UWG). However, these centres receive state funding, which compels them to exercise restraint in their dealings with federal and state governments, as well as companies. And, above all, they do not mobilise consumers to voice their interests strongly to the state and industry. This is what distinguishes foodwatch from other consumer protection organisations, and especially from the consumer centres.

The legitimisation of foodwatch’s activities derives from the imbalance between industry and consumer interests in the shaping of the market.<sup>58</sup> foodwatch sees it as its task to expose the discussed deficiencies, to demand the elimination of the underlying regulatory and implementation deficits and to assert these demands with and through the mobilisation of consumers.

In order to achieve the aims of food law – namely the prevention of fraud and the protection of public health – and to strengthen the legal position of consumers in general, extensive measures are necessary at national and European level.

The food market and food law must be shaped in such a way as to ensure that consumers are protected from health hazards and fraudulent practices by means of precautionary measures. At the same time, the self-regulating capacity of the market should be strengthened as a general principle. Improved transparency, properly enforced information rights and obligations, effective liability regulations and the application of the precautionary principle are important elements of self-regulation. These elements, e.g. liability regulations and transparency requirements, would naturally exert a significant preventive effect.

<sup>57</sup> See website of the organisation „Platform Diet and Physical Activity” (peb), <http://www.ernaehrung-und-bewegung.de> (German), (30.04.2013).

<sup>58</sup> Traffic-light labelling and the Smiley System, loc. cit.



The food industry rightly criticises the high level of regulation that constitutes food law. But it also promotes this high level of regulation by not only using its lobby influence to push opaque, detailed provisions in its favour, especially at the sub-legislative level, but also attempting to hinder self-regulatory interventions that would be in line with market requirements (e.g. transparency through information obligations).

Although food law, in its essential features, is to a very large extent harmonised EU law, there is also still some scope at national level for improving the legal position of consumers by the control of foodstuffs, the enforcement of information rights and the imposing and enforcing of penalties for offences. This is expressly and exclusively the responsibility of the individual Member States.

#### **Legal measures:**

- >> The precautionary principle must be reflected in legislation, in the application and enforcement of laws, in control measures and in business practice. This means: the specification and application of the precautionary principle and traceability principle in food regulations at all levels.
- >> Guaranteed traceability throughout the food chain.

### **1.) PREVENTIVE HEALTH PROTECTION:**

#### **EU-law:**

- >> Prohibition of all additives that pose risks to human health (through the consistent application of the precautionary principle in connection with the reversal of the burden of proof).
- >> Feed law: mandatory testing for all feed batches, lifting of the „ban on the use of disclosed information“.
- >> Safe handling of meat-and-bone meal through producer liability for the improper disposal of animal by-products (Category 3 materials).
- >> Limits that are not set on the basis of commercial interests (dioxin); and the effective minimisation (best practice) of contaminants (e.g. acrylamide).
- >> Reduced use of antibiotics in livestock through improvements in livestock-production practices.
- >> Ban on the use of health claims on food products.

#### **National law:**

- >> Prohibition on advertising unhealthy children's food products (marketing bans would likely have to be regulated by EU law).

### **2.) FRAUD PREVENTION:**

#### **EU-law:**

- >> Statutory provisions that give priority to product information over advertising (e.g. on packaging).
- >> Legible minimum font size.
- >> Mandatory declaration of quantities for advertised ingredients on the front of the packaging.
- >> An origin-labelling system that enables consumers to choose regional products.
- >> Nutritional information presented in the form of traffic-light labelling on the front of the packaging.
- >> Understandable declaration of flavourings and additives.
- >> Loophole-free labelling requirements for the use of GM technology, especially the labelling of meat and dairy products from animals fed GM feed.
- >> Transparency with regard to production methods.
- >> Labelling of alcohol content if a food contains alcohol that is produced from the food-production processes (national legislation is possible in the case of non-alcoholic beer [see United Kingdom]).
- >> Minimum filling quantities for packages.

#### **National law:**

- >> „Guidelines“ from the German Food Code Commission must be drawn up for consistency with the actual „prevailing opinions“ of consumers and enable them to make informed choices quickly and easily on the basis of quality (see also the fundamental demands on the role of the Food Code Commission specified in No. 8, below).
- >> Transparency with regard to the use of ingredients of animal origin.

### **3.) ANIMAL WELFARE:**

#### **EU-Recht:**

- >> EU law: legal requirements for humane animal-husbandry practices.

### **4.) FOOD CONTROLS:**

- >> Food controls are only effective if they do not make a futile attempt to replace prevention but instead focus on the consistent monitoring of preventive measures of the food and feed industry. In this sense, food controls must be organised through the centralisation of competences at federal state level, independent of any kind of political influence and supported by penalty-backed, statutory obligations for companies to carry out self-monitoring and verification; these controls must also be backed up by extensive disclosure requirements for government agencies.

### 5.) INFORMATION RIGHTS FOR CONSUMERS, INFORMATION OBLIGATIONS FOR GOVERNMENT AGENCIES/ COMPANIES AT NATIONAL LEVEL:

Information obligations and information rights are highly effective preventive measures. They encourage manufacturers and retailers to act in a precautionary way in order to maintain a positive reputation and avoid unnecessary costs.

- >> Publication of manufacturers' names and product names in the notifications from the European Rapid Alert System for Food and Feed.
- >> Comprehensive and prompt publication of the results of all food inspections, especially all identified breaches of food law – of anti-fraud or health-protection provisions – by food manufacturers.
- >> The right of consumers to obtain information directly from companies and an obligation on the part of the companies to supply this information (e.g. regarding the origin of ingredients).
- >> Introduction of the Smiley System, i.e. publication of the results from public food-inspection visits, including a summarised Smiley rating on the website and on the door of every food establishment.

### 6.) LEGAL POSITION OF COMPANIES – PENALTIES AND CIVIL LIABILITY:

Liability regulations – like information obligations and information rights – can be effective preventive measures, provided it is possible for liability damages to be directly or alternatively established and for guilt (in the case of penalties) to be proved:

#### National law:

- >> Product stewardship by retailers: penalty-backed verification obligations that prevent fraud and health hazards and/or make it possible to impose penalties for violations.
- >> Penalties for creating a potential risk (abstraktes Gefährungsdelikt), e.g. for potential health hazards through bioaccumulative toxins.
- >> Reversal of the burden of proof for health hazards caused by manufacturers/retailers.
- >> Strict liability for companies under civil law (with a catalogue of examples for abstract dangers, such as the contamination of food with bioaccumulative toxins (dioxin).
- >> Government agencies must have a clear obligation to investigate administrative offences under food law (abolition of the „opportunity principle“ in Sect. 130 of the German Administrative Offences Act – OWiG).
- >> Long term: introduction of corporate criminal law to replace individual criminal law in Germany.

### 7.) RIGHTS OF ACTION FOR CONSUMERS:

Rights of action for consumers have a preventive effect because they encourage manufacturers/retailers to avoid the risk of possible lawsuits from the start.

- >> Right of organisations to bring legal action at national and EU level for monitoring the adoption of implementing legislation at the ECJ (e.g. monitoring the positive and negative lists).

### 8.) PARLIAMENTARY CONTROL/LAW-MAKING:

Wherever parliamentary controls are weak or lacking entirely, loopholes open for lobbyists of the food industry, who attempt to block preventive measures (see Section 4).

- >> Effective parliamentary control of law-making in accordance with the „principle of materiality“ at national and European level, i.e. with the principle that significant legal measures require parliamentary control.
- >> Abolition of the German Food Code Commission, which should then be replaced by a democratically legitimised mechanism that guarantees the connection between resolutions/decisions and parliamentary decision-making.

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