

foodwatch 

I N T E R N A T I O N A L

FITNESS CHECK ON THE GENERAL FOOD LAW REGULATION

Does Regulation 178 /2002 fit the
needs of Europe's consumers?

A CRITICAL REVIEW BY FOODWATCH AFTER 15 YEARS



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The adoption of Regulation (EC) 178/2002 laying down the general principles and requirements of food law (the “General Food Law Regulation”) represented a quantum leap in European food legislation. Written in reaction to the major erosion of public trust in the wake of the BSE crisis, Regulation (EC) 178/2002 seeks to ensure a high level of protection for consumers. Its main elements are the protection of public health on the basis of the precautionary principle, fraud prevention, product traceability, transparency for consumers, the creation of a European Food Safety Authority (EFSA) and the integration of feed law into food law. Moreover, Regulation (EC) 178/2002 specifies that business operators are responsible for ensuring that their food and feed products are safe by complying with legal requirements (Articles 19, 20).

According to Regulation (EC) 178/2002, a product is considered injurious to health (unsafe) if it has the potential to cause an adverse health effect (Article 14), a practice is considered fraudulent (deceptive) if it has the potential to mislead consumers (Article 8), and the traceability of a product must be guaranteed at all times and all stages of production, processing and distribution (Article 18).

The fundamental principle of the Regulation is prevention. This means that it should prevent food scandals and breaches of food law before they occur, and ensure that consumers will not be exposed to health hazards or fraudulent practices.

However, neither this original intention nor the formulated provisions of Regulation (EC) 178/2002 are reflected in the respective EU secondary legislation or the enforcement of the requirements. There are enormous gaps between the aspiration and reality of European food law. The requirements of Regulation (EC) 178/2002 often deviate from the reality of the food market and consumer protection in the EU.

This is proof that the corporations of the agri-food sector, with their massive influence on public policy, have succeeded in asserting their financial interests in the context of EU food law. If the law were strictly interpreted and enforced with the aim of prevention, it would impose a financial burden on companies.

THE MOST SERIOUS GAPS BETWEEN THE ASPIRATION AND REALITY OF EUROPEAN FOOD LAW

1. Protection of consumer health – no consistent application of the precautionary principle!

Policymakers are not prioritising prevention in the approval and use of pesticides, additives and veterinary medicinal products and in the setting of limits for contaminants like dioxins, mineral oils, heavy metals (like mercury in fish) and acrylamide (Article 7, Recital 21).

Food scandals of massive proportions involving consumer deception and health risks – such as the horsemeat scandal of 2013 or the Fipronil egg scandal of 2017 – continue to occur.

2. Prevention of fraud and deception – ineffective!

“Legal fraud” through the use of nutrition and health claims on unhealthy food products, products with either no or misleading designations of origin, the use of unrealistic portion sizes and misleading target guidelines to make the product look healthier than it actually is and deceptive animal welfare claims are standard fare at the supermarket.

3. Traceability – in no way “guaranteed at all times”!

In spite of all the scandals, this clear requirement of the Regulation (Articles 3 [15] and 18) is not being enforced at company level or among the supervisory authorities. This is one of the main reasons why food scandals are able to reach such massive proportions, as was once again demonstrated by the recent case involving Fipronil-tainted eggs.

4. Transparency for consumers – nowhere near adequate!

The information obligations of companies and government agencies are inadequate, and information about unsafe products in the European Rapid Alert System for Food and Feed (RASFF) and the Administrative Assistance and Cooperation System (AAC) for food fraud is anonymised.

5. The European Food Safety Authority (EFSA) – biased in favour of economic interests!

To date, the work of EFSA has not been sufficiently independent of economic or political influence.

SUMMARY

The concept of prevention enshrined in Regulation (EC) 178/2002 has not been implemented in legislative practice.

THE MAIN REASONS:

- a. The provisions of Regulation (EC) 178/2002 are not being observed (e.g. through the consistent application of the precautionary principle or the guarantee of traceability) and are not reflected in the respective secondary laws.
- b. The weaknesses of Regulation (EC) 178/2002 have not been eliminated: inadequate consumer information obligations for public authorities and companies.
- c. New negative developments (e.g. international food fraud) are not being prevented by effective legal measures.

HOW REGULATION 178/2002 CAN FIT THE NEEDS OF EUROPE'S CONSUMERS – WHAT FOODWATCH IS CALLING FOR:

It is high time that European food law be consistently enforced and – where necessary – developed in the sense of preventive consumer protection:

1. Consistent enforcement of Regulation (EC) 178/2002:

- a. Safe food products through the consistent application of the precautionary principle (Article 7).
- b. Ensuring full traceability at all stages of the supply chain (Articles 3 [15] and 18).
- c. Protection from deceptive product information through honest labels (Article 8 – as well as the demands of the European Parliament in its “resolution on the food crisis, fraud in the food chain and the control thereof” from 14 January 2014¹).
- d. The work of EFSA must be fully transparent and completely independent of political and economic interests (Articles 37, 38 and Recitals 35, 47).

2. Consistent further development of Regulation (EC) 178/2002:

- a. Transparency (extension/improvement of Articles 10):
 - I. Effective laws guaranteeing consumer access to information in all Member States; extensive obligations for companies/public authorities concerning the provision of information to consumers in all Member States.
 - II. Provisions requiring companies to immediately and automatically disclose all information concerning fraud and health hazards to the competent authorities must be expressed in clear and unequivocal language and underpinned by appropriate sanctions.
 - III. Provisions requiring public authorities to immediately disclose all information on fraud/deception and unsafe food products to the public must be expressed in clear and unequivocal language.

- b. Prevention of food fraud and food scandals through the consistent implementation of Article 8 and additional provisions:
- I. Liability for food companies through effective statutory obligations for self-monitoring.
 - II. Dissuasive sanctions for violations of legal requirements.
 - III. Guarantee of traceability.
 - IV. Effective transparency requirements.
- c. Rights of action for consumers against breaches of statutory duty by public authorities or against the contents of legal provisions.
- d. Food law should be aimed at making it easier for consumers to choose a healthy, balanced diet and preventing non-communicable diseases (NCD) through the application of the precautionary principle (Article 7, Recital 21) with respect to
- I. consumer-friendly nutrition labelling,
 - II. the regulation of child-targeted marketing in accordance with the WHO nutrient profiles and
 - III. making healthy food more affordable compared to unhealthy food by price policy, e.g. subsidies and taxes.

IMPRINT

Publisher

Thilo Bode (v.i.s.d.p.)
foodwatch international

Brunnenstraße 181
10119 Berlin
Fon +49 (0) 30 / 24 04 76 - 0
Fax +49 (0) 30 / 24 04 76 - 26
E-mail info@foodwatch.de
www.foodwatch.de

Status

November 2017

¹ European Parliament resolution of 14 January 2014 on the food crisis, fraud in the food chain and the control thereof (2013/2091(INI)).