Intermediate EU report on the institutional dimensions of Consumer Trust in Food

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Institutional Report: European Union

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Consumer Trust in Food -
A European Study of the Social and Institutional Conditions for the Production of Trust[1]

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PREFACE

This report is a publication from *Consumer Trust in Food. A European Study of the Social and Institutional Conditions for the Production of Trust*. The TRUSTINFOOD project (2002-2004) is supported by the European Commission, Quality of Life and management of Living Resources Programme (QoL), Key Action 1 Food, Nutrition and Health (contract no. QLK1-CT-2001-00291). Unni Kjærnes at The National Institute for Consumer Research (SIFO) is responsible for coordinating the project.

On the basis of individual and institutional data, the study seeks to identify and analyse factors that determine trust in the food supply and in information sources. These factors include the roles of public authorities, consumer organisations, market actors, consumers, NGOs, etc. Representative surveys have been conducted in six countries, Denmark, Germany, Great Britain, Italy, Norway, and Portugal. Institutional studies have been carried out in the same countries and at the European level. By eventually bringing all these data together, we expect to achieve a systematic analysis of the institutional bases of consumer trust and distrust in food provision under varying conditions in contemporary Europe, including a critical analysis of alternative strategies for handling trust and distrust in the food system. More information and new publications are available on the project website: www.trustinfood.org.

This report presents data and analyses from studies at the European Union level. It belongs to a series of reports from each of the six countries and one concerning the European level. This report can be read independently. But together, the reports are also meant to provide a basis for the comparative institutional analyses. The research questions as well as the design and methodologies in these institutional studies have been closely coordinated throughout the process of data collection, analysis and writing. Responsible for this coordination have been the Danish partners: Lotte Holm at the Research Department for Human Nutrition, Royal Veterinary and Agricultural University (KVL) in Copenhagen and Bente Halkier at the Department of Communication, Roskilde University Centre (RUC). The EU level report was placed under the responsibility of the UK partners : Alan Warde and Mark Harvey, Centre for Research on Innovation and Competition (CRIC) at the University of Manchester. The various country teams in the TRUSTINFOOD project have contributed with long and intense discussions during a series of project meetings. In the final round, the full report drafts have been reviewed by Lotte Holm and Unni Kjærnes. It must be emphasised, however, that the authors take full responsibility for the contents of this report.

We wish to thank all informants for their collaboration, stressing that while quoted extracts come from the interviews that they have kindly given us, we as authors are solely responsible for the interpretation and the overall structure of the argument in this country report.

Manchester, July, 2004

Centre for Research on Innovation and Competition,

The University of Manchester,

1 Executive Summary

1.1 Objectives

- The report aims to analyse the developing institutional basis at the European level for the Trust in Food, involving the construction and redefinition of the European 'consumer' and 'consumer interest', in relation to the organisations and interests involved in food provisioning.
- Based on a view of trust as a relationship between parties, the report aims to analyse the changing distribution of responsibilities between parties as represented at a European level for five key food issues: safety, nutrition, quality, value and ethics.
- The report aims to analyse changes in regulatory policies in relation to food provisioning, particularly following the BSE episode, as a key indicator of institutional change at the European level.

1.2 Study methods

The main study methods for the report were:

- The construction of a framework for comparative institutional analysis co-ordinated with the six national studies.
- A portfolio of 20 interviews with key strategic actors involved in food policy at the European level (See Appendix A for list). In depth, semi-structured interviews were conducted.
- The documentary analysis of step-by-step decision making processes, and the process of adoption of key debates prior to adoption of a selection of relevant and significant Commission proposals.

1.3 Main findings

The main findings of the report can be summarised under four heads: the emergence of a European food policy and European 'consumer' (Section 2); the changing institutional balance between the Commission, the Council and the European Parliament in response to the BSE crisis (Section 3); the institutional division of responsibility, including the attribution of responsibility to consumers (Section 4); and the institutional differentiation between the five key food issues (Section 5).

- Prior to the emergence at the European level of the BSE crisis in 1997, there had been a process of Europeanisation of food policy as well as a development of a consumer policy, driven primarily by the logic of market integration and efficiency (2.1, 2.2).
- Following the BSE crisis a major re-alignment of powers between the Commission, Council and Parliament in relation to food gave the latter critical influence through co-decision making. This change, rather than consumer organisation influence at the European level, gave new prominence to consumers as a primary concern of food policy (Section 3).

- A major institutional change occurred, putting consumer interests on a new basis, occurred with the establishment of DG SANGCO and the European Food Safety Authority (Section 4.1, 4.2).
- A new institutional differentiation developed between policy and regulation based mandatory EU and national mutual recognition emerged at the European level, with food safety as the domain of mandatory European level, regulation (4.1, 4.2).
- The new institutional structures resulted in continuing tension between health, safety, and nutritional issues, involving the creation of responsibilities and risks distinguishing consumer and citizen (5.1), with the former endowed with individual choice and responsibility, the latter with rights and obligations (5.1)
- The development of European level regulation on labelling, based on concepts of the informed consumer, and attributing responsibility to consumers for making informed choices, has been a development of central importance in creating a new European-level institutional condition of trust. The label regulation of nutritional claims is exemplary in this regard (5.1).
- The construction of European-level institutions surrounding quality, notably in relation to denominations of origin and geographical designation, have demonstrated the strengths and limits of European regulation of quality in a market setting, creating new relationships of trust in quality. The construction of 'organic' quality at a European level regulation is exemplary of a need to set market standards within a Single European Market (5.2).
- A new process, paralleled in country studies, of redefining the relationship between public and private sector responsibilities has emerged with the development especially of integrated retailer supply chains, with the promotion of HACCP through European directives (5.4)
- The development of food policies focused around a European 'institutional consumer' as framed and protected by European regulation has created new tensions with global food regulatory systems, and the WTO Sanitary and Phytosanitary (SPS) treaty agreements (5.5).

1.4 Conclusions

- A major restructuring of institutional and regulatory frameworks at the European level has created new conditions and bases of trust (and distrust) in food.
- The 'consumer' has emerged at as a significant figure in European regulation, discourse and institutional arrangements over the past two decades, justifying the concept of an 'institutionalisation of a European consumer and citizen' in relation to food provision.
- The five dimensions of trust in food (safety, nutrition, quality, value, and ethics) have found new institutional expression at the European level, partly in response to food crises, partly in response to the development of food provisioning systems.
- There are continuing tensions and grounds for further institutional change in relation to conditions for trust in food, notably around the issues of nutrition and health, novel foods, and divergences between European and WTO regulatory frameworks.

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2 Introduction

2.1 The overall TIF project

As a contribution to the TIF project[1], this report describes and analyses changes in the supranational and trans-national regulation of food issues, with a particular focus on the development and implementation of EU-standards and policies. It aims to chart the changes in public regulatory policies at the Community level, to describe the changing divisions of responsibilities on the main key food issues (quality, nutrition, safety, value for money and ethics) identified in WP5. It follows on from and completes the synchronic mapping of the European Union (EU) institutional framework of the food sector already delivered under WP4.

2.2 Food issues and EU institutions: overall presentation

Today, almost all aspects of foodstuffs marketed in the EU countries are defined, controlled and regulated by national and supra-national regulations and standards. In particular, since the creation of the Single Market, the growing regulatory power of the EU has affected more and more important parts of the production, control, distribution, circulation, packaging and presentation, and also social judgments and scientific expertise concerning food. The "social conditions for the production of consumer trust in food"[2] need to be studied with regard to the recent development of forces that aim to "harmonise" the European Food market in order to facilitate cross-border and extra-European exchanges, and with regard to the opposing forces which seek to prevent "harmonisation" becoming "homogenisation". The EU essentially produces food regulations aimed at an approximation of member states' food laws. These are the result of incessant negotiations between the main three entities that are directly involved in the regulation, decision-making and implementation of EU law, and the various lobby groups which interact with them more or less formally.

Let us first of all recall briefly the main functions of the three EU institutions referred to. The European Commission (EC) is composed of several Directorates General (DGs). It has legislative initiative, writing "proposals" to be rejected, amended or adopted at the end of the legislation-making process. The EC also represents the EU in international trade negotiations. The Council of the EU is a legislative body having voice on all decision procedures. It represents the interests of the Member States and has power to conclude international agreements on behalf of the European Communities. The European Parliament (EP), directly elected by EU citizens, shares a co-legislative power with the Council. It considers the Commission's proposals and is associated with the Council in three different decision procedures in the legislative process. Parliament and Council share budgetary powers. These three institutions are distributed between Strasbourg, Luxembourg and (predominantly) in Brussels. They are surrounded by "interest" and "non-interest" groups which exercise intense lobbying activities. One estimate that there are approximately 3,000 special interest groups in Brussels,

[1] Consumer Trust in Food. A European Study of the Social and Institutional Conditions for the Production of Trust, 12 March 2001, 'Quality of Life and Management of Living Resources.' Work Programme 2001. Key Action 1: Food; nutrition and health

[2] Title of the overall TIF project

consisting of 10,000 individuals working in the lobbying sector[3]. The dialogue between the Commission and the interest groups takes three forms: by establishing advisory committees, by informal contacts with interest groups on an ad hoc basis or by publishing consultation document such as "Green papers" on the Internet and sent to civil society actors for reaction.

The EU is notably the world's largest producer of food and drinks. The food and drink industry ranks alongside the automobile sector as a leading industrial sector in the EU, with an annual production of around €600 billion and employing over 2.6 million people[4]. The EU food industry is becoming very concentrated: on average the five firm concentration ratio is 30% with increasing importance of the world's largest food multinationals such as Unilever, Nestlé, Philip Morris and Danone. The food retail sector selling to final consumers is undertaking the most dynamic processes of concentration recently observed. About fifty firms account for half of the entire turnover of the EU food retail sector; the top 20 firms account for 40% of total activity.

2.3 Localisation of and access to sources

The analysis presented here is the result of 18 months of collection, analysis, comparison of data collected by systematic investigation of EU related documents on food safety, quality, and nutrition, in addition to interviews of 20 persons, mainly in Brussels.

In contrast to some member countries that were studied simultaneously in the frame of the TIF project, access to writing and oral sources has been relatively easy at the EU level. The amount of official information made publicly available by the EU institutions on the Internet can be qualified as "colossal". For written sources, the whole body of European Union law (Official Journal, Treaties, Legislation or legislation in preparation, Case-Law, Parliamentary questions to the Commission etc.) is published in all the official languages in the *EUR-Lex* website. The sites *PreLex* (Commission) and *Œil* (Parliament) provide information that permit one to follow step-by-step the stages of the decision-making process between the EU institutions. They allow one to follow the content of the debates between the institutions preceding the adoption of a Commission proposal. The *RAPID* database contains all press releases (since 1985) of all the Commission DGs as soon as they are made public.

Each DG manages a website in which are published speeches of the DG, newsletters, reports and consultations. DG SANCO's website is among the most comprehensive, in coherence with its policy of "transparency". As issues are often transversally treated by more than one DG, another possibility for researchers to get issue-related information is to consult the website *SCAD* which provides the main legislative measures and procedures around a selected but still great number of key-topics and provides links to official texts and DG websites. The latest public events such as parliamentary sessions are also made available on the Internet in real-time for any home computer. Other debates are video-recorded on a case by case basis (such as the EFSA meeting) and made publicly available. As shown by these examples, the problem is rarely coming from a lack of information as it is abundant and technically reliable. The problem comes rather from the choice, the weighting and ranking of information that is sometimes reproduced many times. In order to build a sample of speeches, white

[3] Source : Secretariat General European Commission
[4] Source : White Paper on Food Safety COM(1999) 719 final

and green papers, committee reports, from EUROPA (European Commission Website) and EUROPARL (European Parliament website) , we used search engines (site specific and those such as Google). Therefore, our main working material was the result of a systematic search by "key food issues" (or their related meaning) identified as "nutrition", "quality", "safety", "animal welfare" (for ethics), "Genetically Modified Organisms" (GMO), "novel food" etc. The same search engines have been used to select among the position papers and the press release documents published on their websites by the NGO's, consumer organisations and interest groups that we interviewed. As planned in the initial project, we also realised a total of 20 interviews[5], mainly in Brussels. All the organisations and DGs have been relatively easy to contact and despite heavy agendas in the hectic Brussels European quarter, they accepted to be interviewed for approximately an hour.

Figure 1 Localisation of interviewees in Brussels

To summarise the content of the interview guide: each interviewee was asked what was for them "the most important food issue for consumers" at the time of the interview, and to what extent the interviewee, within their organisation, was concerned by this issue in terms of responsibilities and actions. Whenever possible, the five key-food issues identified in the overall TIF project (quality,

[5] In details among the interest and non-interest groups:

- Two consumer organisations (BEUC, EUROCOOP)
- Two NGO's (EEB, EPHA)
- Three representatives of the food industry and retailers (CIAA, Eurocommerce, EUFIC)
- Two representatives of the agricultural sector (COPA-COGECA, CPE)
- Eurogroup for Animal Welfare.
- In DG SANCO, interviews of four persons, one adviser on Consumer Information, one responsible for biological risks (BSE in particular), one responsible for Health Monitoring and prevention, one responsible for EU Food law and relations between SANCO and EFSA.
- In DG AGRI, three persons have been interviewed: one responsible for beef regulation, one for markets in crop products (tomatoes notably), one responsible for quality policy of agriculture products.
- One person responsible for SPS agreement, Hormone Beef and GMOs in international relation has been interview at DG TRADE.
- Two British academic personalities have been interviewed in London for their knowledge on respectively food policy issues and nutrition issues.

nutrition, safety, value for money, ethics) were reviewed with the interviewee following approximately the same pattern as the first question.

The interviews carried out have demonstrated that all our interlocutors had a high degree of skill in managing public relationships and that they were always well prepared to intervene in any public discourse to expose and defend the position of their group or DG in the latest developments. The great majority of civil servants seemed to have a very good knowledge of their files, but limited general vision of the problems and a relatively short memory for the past events. This can be explained in some cases by a "limitation of responsibility" for affairs they have no direct responsibilities for and by a high degree of rotation between positions (change of responsibilities after three or four years). Also, since September 2000 a "code of good administrative behaviour[6]" regulates public relations between Commission staff and citizens, how to behave with and provide answers to the thousands of consultants, lobbies, journalists or researchers they deal with in Brussels[7]. Memory, the ability to talk about the past, is a rather precious commodity among the lobby or non policy-maker groups as such longevity can bring a certain legitimacy. This is particularly attractive for the Commission's staff who precisely lack of this resource.

Despite the high technical content of certain food issues, almost all the persons interviewed among lobby groups were aware of the latest developments in EU food regulations regarding food safety, nutrition, labelling, claims, EFSA etc. The degree of knowledge can be qualified as "high" in relation to that produced by the Brussels institutions and medium in relation to the other lobby groups position. It is not surprising when considering that most of our interviewees belong to interest groups regularly consulted, formally or informally, by the Commission services. They are solicited at an early stage of the legislation making process and are required to deliver an official position paper in sometimes only a few days. On the other hand, when reporting consumer opinions, they were rarely able to mention their sources. Often, consumer opinions were supported by personalised examples taken in the close environment of the interviewee (particularly true for quality and nutrition matters).

In introducing the term "consumer" in our interview guide, we are aware that we introduced bias in the answers. With very few exceptions, the expression "consumer" was largely taken for granted and rarely submitted to criticism. The very high degree of homogeneity in the discourse and expressions used by Commission staff, stakeholders, consumer organisations and NGOs was also remarkable. This is the result of a combination of factors. They are all regular interlocutors of each other, their offices are located within a small area of the European quarter of Brussels, they are invited to the same numerous meetings[8], using almost exclusively one unique language in their writing and oral exchanges, sharing for some of them the same shopping place or sporting activities. With the exception of a French civil servant who recently retired, those interviews conducted in French with native French speakers were filled with English expressions as if the economy of language in this particular context dictated the use of this "EU English" for greater efficiency. This probably cannot be generalised to all issues treated in Brussels, but for food policy and consumer policy it seemed to be

[6] Officially, "the Code lays down the principles on which relations between the Commission and the public should be based: lawfulness, non- discrimination, proportionality of measures to the aim pursued, and consistency in administrative behaviour"

[7] "Staff replying to enquiries shall provide information on subjects for which they have direct responsibility and should direct the caller to the specific appropriate source in other cases. If necessary, they should refer callers to their superior or consult him or her before giving the information"

[8] Meeting organised by the Parliament, the Commission or the lobby groups and NGOs.

the case. Both issues have developed recently and unlike the agriculture domain, for instance, have been less influenced by the foundation countries such as Germany and France and more by the UK, where consumer issues are a well developed theme in academic as well as in political spheres.

2.4 Presentation of the report

The year 1997 became an important turning point in EU food policy by bringing the consumer to the fore. A few months after the emotion provoked by the British Ministry of Agriculture announcement of the existence of a link between BSE and a new variant of CJD, the Medina parliamentary committee published a report on the "maladministration" in the implementation of Community law in relation to BSE[9]. The Commission responded quickly by the publication of a Commission document that promised a "new departure", a complete reorganisation that intended to place "consumer protection" at the core of a new EU integrated food system headed by a new European Food Authority. The ultimate objectives were to better protect consumer health and "restore" consumer "confidence". It was proclaimed, with a certain emphasis, that the market will not have prevalence over consumer interests. Although this opposition between market and consumer was not an unknown political theme, in particular since the 1970s, this was the first time it was officially and unanimously recognised by all EU institutions as a potential tension that needed to be regulated.

What are the effects of this turn in today's EU food policy? To answer this question, it is necessary first of all to place this "new departure" in the context of that which preceded it. This will be the aim of our first part in which we will describe briefly the circumstances of the development of an EU food policy and an EU consumer policy.

By approaching the new food policy by key-issues such as quality, safety and nutrition, our second part will show great contrasts between what was announced in the "New departure" programme and the effective repartition of responsibilities that has followed. The somewhat opportunistic introduction of an ill-defined concept of "consumer" in a food policy which used to deal with "consumption" has led to tensions that are still reflected in the division of responsibilities. The EU institutionalised consumer has many facets that reflect the still fragmented EU food system.

3 EU food single market and EU consumer policy

We start by answering basic questions: Why and how the European Community had to intervene in national food regulation? How did the EU go from a market-led food regulation system to a more integrated EU food policy addressing consumer safety? Indeed, the BSE crisis gave a decisive impulsion to the "new departure" for an EU food policy. But it would not have had such an impact without the changes that occurred in the late 1980s and the beginning of the 1990s in the perspective of the achievement of the single market: the concomitant combination of a new harmonisation method

[9] Temporary committee of inquiry into BSE , Report on alleged contraventions or maladministration in the implementation of Community law in relation to BSE, without prejudice to the jurisdiction of the Community and national courts, Rapporteur: Mr Manuel Medina Ortega, http://www.europarl.eu.int/conferences/bse/a4002097_en.htm

for a systematic regulation of food, and the acknowledgement of the role played by consumption in the economic dynamism of the single market.

- First (2.1) we will show that the changes to the method of systematic harmonisation, in order to reaffirm the principle of Subsidiarity, can be counted as the first act of harmonisation of food "systems" in the EU.
- Second (2.2) we will show how consumer policies developed and how this created a favourable ground for the later changes in the aftermath of the BSE crisis (part 3).

3.1 From the elimination of national customs to the conception of an EU food policy

One of the guiding preoccupations which led to the signing of the Treaty of Rome (1957) was thecreation of a Customs Union which would cover all trade in goods. The establishment of a free trade union implied the systematic prohibition of all kind of customs duties on imports and exports between Member States. The systematic elimination of national customs necessitated at least a minimum of "harmony" between the different national legislation. For this, the Treaty foresaw the "approximation of the laws of Member States to the extent required for the functioning of the common market" (EC Treaty, art.3). One of the first important programmes of harmonisation was launched by the European Commission in 1969. The Programme for the Elimination of Technical Obstacles to Trade[10] related to foodstuffs and identified areas of harmonisation around processed foodstuffs such as butter, pasta, ice-cream, soft drinks, beer or cheese. This inaugurated a period of systematic regulation, product by product, laying down standards for the control of all aspects of food such as raw materials, manufacturing processes, ingredients and labelling. This was according to an approach known as the 'vertical approach'. But this method was found cumbersome, expensive and finally relatively inefficient. The "Cecchini report[11]" identified a total of 218 non-tariff barriers to trade in processed-product sectors and estimated the loss for the Food Industry at 500 to 1,000 million ECU per year (Ottaway,1995). To remedy the situation, the Commission's "White Paper on the completion of the internal market in the foodstuffs sector" (1985) proposed to delimitate the intervention domain of the Community to areas related to "health", "fair practices" and "environment" and proposed that in all the other domains the application of the "principle of mutual recognition" by the member states. As summarised in an EC Green Paper:

> *"the Commission indicated that in principle it would no longer put forward proposals for the harmonization of quality specifications, such as rules relating to the composition or manufacture of foodstuffs which are not related to the protection of public health. Instead, the Commission believed mutual recognition could be achieved by reinforcing the labelling rules to guarantee consumer information and fair trading."*

Under the principle of recognition, products and services made in compliance with the requirements of one member state can not anymore be prevented from being sold in any other member state. The new

[10] General Programme of 28 May 1969 for the elimination of technical barriers to trade which result from disparities between the provisions laid down by law, regulation or administrative action in Member States Official Journal C 076 , 17/06/1969 P. 0001 - 0001

[11] "The European Challenge - 1992. The Benefits of a single market". Paolo Cecchini Wildwood House 1988, in

harmonisation inspired from the "Cassis de Dijon" judgments, foresaw that EEC actions to ensure the free circulation of products was to be methodically undertaken by one of two means: either by approximation of the Members States' laws in the areas related to "consumer health", "fair practices" and "environment"; or by ensuring that the principle of mutual recognition was correctly applied by Member States, in full respect of the principle of Subsidiarity[12]. The systematic vertical harmonisation on a product per product basis was then replaced by fewer "horizontal" covering directives to regulate "Food additives"[13], "Food labelling and presentation"[14], "Materials in contact with food"[15], "Food control"[16], "Food hygiene"[17] and "Food for particular nutritional uses"[18]. For all other standards, not directly related to health, fairness and environment, the control of the correct application of the principle of mutual recognition is left to the vigilance of the States, and if no arrangement is possible, to the European Court of Justice.

Community food legislation	**National food legislation**
Mandatory requirements relative to - **protection of public health;** - **protection of other consumer interests,** - **fair trading;** - **need to ensure appropriate official controls.**	All the other domains
Vertical harmonisation : (*Regulations*) Laying down detailed specifications for a specific type of foodstuff. - cocoa and chocolate - sugars - honey - fruit juices - jams - jellies and marmalades - preserved milk - coffee extracts - mineral waters.	Application of the **- Principle of Mutual Recognition** *(European Court of Justice in case of dispute)* A Member state should allow to circulate freely in its territory goods produced or marketed in conformity with the rules, tests or standards found in another Member State which offer an equivalent level of protection to its own rules, tests or standards
Horizontal Harmonisation : *(Directives)* - Food labelling and presentation - Additives - Materials contact with food - Food control - Food for particular nutritional uses	- Use of voluntary instruments, such as **standardization or codes of practice**.
Voluntary vertical regulation Exception in the field of Agriculture in relation to EC subsidies	

[12] Under this principle, Community rules only when the aim of the envisaged action cannot be obtained satisfactorily at a lower level
[13] Council Directive on Food Additives 89/107/EEC
[14] This Council Directive on Food Labelling and presentation 79/112/EEC entered in force earlier, in 1979
[15] Council Directive on the Materials and Articles in Contact with Foodstuffs 89/109/EEC
[16] Council Directive on Control of Foodstuffs 89/397/EEC
[17] Council Directive on the Hygiene of foodstuffs 93/43/EEC
[18] Council Directive on foodstuffs intended for particular nutritional uses 89/398/EEC

A brief description of some of the most important directives illustrates how extensive and all-encompassing they are. The "Food Control" directive provides general principles for control and inspection of all aspects of food processing to be applied by Member States' competent authorities. These controls affect not only ingredients, additives, material intended to come into contact with foodstuffs, cleaning and maintenance processes; but also the environment of fabrication including *inter alia* the premises, offices, plant surroundings, transport and machinery equipments. The directive also requires people in contact with the process or part of the process of production of foodstuffs to be subject to inspection. This "Food Control" directive is complemented by a "Food Hygiene" directive which determines what general hygiene principles must be applied to foodstuffs when prepared, treated, processed, transported; and to personnel when in contact with foodstuffs. Harmonisation is often accompanied by a choice of which standard to be used as a reference, the directives advise Member states to encourage economic actors to apply. on an international basis. the Codex Alimentarius general principles on food hygiene or, on a European basis, EN29000. The directives also encourage the HACCP[19] method to be promoted to economic actors for the identification along the food processing chain of critical points with regard to food safety.

To secure this harmonisation system, member countries are prevented from introducing new standards without EC authorisation. A Standing Committee on Foodstuffs[20] is established to be consulted in the cases where countries intend to maintain, amend or introduce national provisions for hygiene or food control. To be accepted by the Commission, the amendments must not be more stringent than those defined by the European directives.

Having said that the EC *"would no longer put forward proposals for the harmonization of quality specifications (…) which are not related to the protection of public health"*, and that the principle of recognition should apply in other cases, one could conclude that since the adoption of this new approach the division of responsibilities was quite clear between EU and Member States. But the multidimensionality of food does not make it easy to determine on what grounds a food regulation should be based. The determination of the main objective of a regulation is often controversial between economic actors, between member countries, between the EU and member countries or even between different EU institutions. Depending on their own division of responsibilities for food issues, which depend on economical, historical and cultural factors, member countries have different interpretations of what aims a regulation should have. As a consequence, to be successful this new approach implies a minimum level of harmonisation between countries in framing, assessment and management of food issues. This will become particularly obvious during the food crises, particularly BSE. But before that, in 1992, the countries tried to maintain their existing systems and protect their food markets from growing competition.

One of the strategies of the member states to protect some of their food producers in a increasingly competitive market was to support private protection initiatives on the basis of quality[21]. For instance,

[19] Hazard Analysis and Critical Control Points system is designed to prevent food contamination by identifying potentially unsafe links in the food processing chain.

[20] Functionally speaking, the StCF is the joint political organ of the member states designed to support and control the Commission " DG SANCO website, Regulatory Committees http://europa.eu.int/comm/food/fs/rc/index_en.html

[21] As well summarised by the general advocate of the ECJ, "it is recognised by the Article 28 EC (*which prohibits any measure hindering intra-Community trade*) may have prompted producers to seek refuge in industrial property rights, that is to say to endeavour to compensate for the lost national statutory protection from

France and Italy supported agro-food sector initiatives to create niche markets based on specific characteristics or regional identities, on the ground that they had a positive impact on rural development, as they produce "quality" foods appreciated by an increasing number of consumers. Quality issues being not included in the three areas of harmonisation defined, these protected appellations should have been rejected at the EU level. However, under pressure of France, in order to remain faithful to its commitment towards "The Future of Rural Society"[22] at a time of CAP reform, and in anticipation of a growing consumer demand for quality products[23], the EC choose to issue new regulations that aimed to protect categories of regional products. This is an important breach in the philosophy of the single free market. These regulations related to Origin and Geographical Indications[24], to specific characteristics[25], and to organic production - allowing some food and non-food products to be exceptions to the rule of the free single market. Other countries, particularly in northern Europe, choose other quality strategies. While the countries of southern Europe have accorded greater importance for the support of products of certified origin (France, Italy, Spain and to a lesser extent Portugal), northern countries have preferred a system of registration of certification marks (Barjolle and Sylvander (2000), Thiedig and Sylvander (2000), Lucatelli (2000)).

The new horizontal approach that restricted protection of the food market to only that for reasons of health, environment and fair trade, had another consequence. It increased the number of disputes between trade partners and producers in the single market. The European Court of Justice (ECJ) became the only legitimate arbiter in these disputes. Its role became of primary importance and its responsibilities seen as too important considering what was at stake: the functioning of the single market. For the Commission, there was obviously a danger of increasing conflict and dispute between economic actors and between states without and solution of the root causes. On the one hand the new approach stimulated competition among the national regulators (Majone, 1996) and on the other the new integration philosophy "less regulation for better regulation" tended to "judiciarise" the economic integration process, not to organise it.

As soon as 1992, the Commission acknowledged the weak performance of the approaches adopted up to then and envisaged a more global food legislative framework[26].

> *"The legislation is (…) based on a complex division of responsibilities between the Commission and the Member States. The situation is complicated and difficult to understand, not only for the average citizen, but sometimes also for the specialist. This has led to criticisms that the Community lacks a coherent policy towards the foodstuffs sector as a whole, and approaches problems piecemeal".*

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competition by creating new rights as protected designations of origin and protected geographical indications"" Opinion of advocate general ALBER delivered on 25 April 2002 Case C-108/01 (1) Consorzio del Prosciutto di Parma (2) Salumificio S. Rita SpA v (1) Asda Stores Limited (2) Hygrade Foods Limited, source : CURIA (ECJ website)

[22] Document published by the European Commission in 1988.

[23] 'It has been observed in recent years that consumers are tending to attach greater importance to the quality of foodstuffs rather than to quantity;' Extracts from Council Reg. (EEC)No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

[24] regulation 2081/92/EEC

[25] regulation 2082/92/EEC

[26] Green Paper, 1997

The "principle of mutual recognition" is not able to significantly reduce the heavy task of the programme of economic integration. Detailed monitoring of the application by Member states and economic actors of the principle of mutual recognition lead the Commission to formulate an alternative approach. More collaboration with market actors and expert players, and a more "integrated" Community food law[27] was necessary to accelerate the process of harmonisation in the new SEM. An EU food policy (and not just a set of regulations) was not born, but at least conceived in the Commission.

In terms of division of responsibility for food issues in the member countries, the introduction of the horizontal approach inspired from the Cassis de Dijon judicial decision, is of primary importance as it can be seen as a calculated or uncalculated community attempt to harmonise not only the legislation but also the food system in the member states. The countries are forced to agree altogether and to find consensus on the delimitation on what is a food "health" issue, therefore member states need to find these agreements first of all between the different agents and actors of their own food system. One can conclude that the establishment of the SEM and the new harmonisation approach have constituted a decisive step towards an Europeanization of the member states' food systems. This hypothesis should be tested with the results obtained in the member countries studied in the TIF project.

What we will see further is that this Europeanisation of food issues has been institutionalised at the EU level in the aftermaths of the BSE crisis. But before that, let us consider the impact of the development of a future EU consumer policy.

3.2 Towards an EU Consumer policy

The first years of the 1990s saw the development of an "EU consumer policy" that was not expected only a few years before. As Geoffrey Woodroffe wrote in 1984:

> *"National parliaments have more "power" than the European Parliament; national farmers', producers', bankers', traders' or standardisation associations, trade unions or consumer organisations have generally more influence than the corresponding European organisations, which generally are financed, staffed and influenced in their policy by national interests. "Thinking federal" appears not to be a formula that applies to any relevant political, economic or social body at EEC level. These introductory remarks seem to suggest that action taken in the interest of consumer should best left to national authorities and that the EEC should not deal with consumer protection ".*

Although this extract does not precisely represent the overall thoughts of its author, it demonstrates the unpopularity of a consumer policy that could come from Brussels. As has been noted, consumer protection was only vaguely mentioned in the 1985 White Paper (Kendall, 1996:9). Once the EU began to implement the internal market programme, consumer protection started to be recognised as unfairly neglected and was eventually found to be of prime importance in the functioning of the single

[27] . "In contrast to legislation in most of the Member States, Community food law has developed piecemeal, over time, and there is no central unifying text setting out the fundamental principles of Community food law and clearly defining the obligations of those concerned" Green paper **:** The general principles of food law in the European Union COM(97) 176 final

market. In a working document published by the Commission in 1992[28], one can read a first justification of an EC consumer policy, argued in market terms:

> *"The single market cannot be a success without the active participation of consumers and this participation is dependent on consumers having confidence that their interests will be protected as much in Community-wide market as in their national markets. The Single Market playing field is far from 'level' with so many different levels of consumer protection which distort competition."*

The Single European Act (1987) recognised "a high level of consumer protection" as one of several objectives for the completion of the Single Market; the Maastricht TEU (1992) lifted this objective to the rank of a legal basis of the Treaty[29]. In 1989, an independent Consumer Policy Service was set up that would become a full DG for Consumer policy in 1995.

1987	Single European Act (SEA) Article 100A: Concerning consumer protection, the Commission will take as a base "a high level of protection".
1989	Establishment of an Independent Consumer Policy Service (CPS)
1992	"High level of consumer protection" becomes a legal basis. Art 129a of the Treaty of European Union
1995	CPS becomes a full Directorate-General, the DG XXIV for Consumer Policy

Table 1: Four key dates for the Development of the EU Consumer policy

The development of a common consumer policy was not solely motivated by the achievement of the SEM (Single European Market), although that was its first legitimate justification regarding the basis of the Treaty. Within the context of the pre-Maastricht period, it found other justifications. One of them was the need to achieve "credible policy commitments" (Majone,1996). The Community, reduced to a "regulatory body", is highly dependent on the member states and devoid of "any power to tax and spend" in social matters and welfare-state activities. The development of a consumer policy must be seen in the more general need for expertise from market players, NGOs and scientists to develop "supportive networks" in order to reduce decision making cost and ensure "input-legitimation"[30]. Despite their poor capacity as experts, Consumer organisations have, for the Commission, an appreciable power of "input-legitimisation". Added to this the pressure from the European Parliament - particularly since the introduction of direct elections - who continuously criticised the absence of any commitment from the Commission and Council to develop an EU

[28] Consumer Policy in the European Community – An overview, Commission document, DN :MEMO/92/68, source : EUROPA

[29] by introducing the Art.129a

[30] "Supportive networks seek to secure input-legitimation by allowing the concerned actors to take part in policy-shaping (…) in which the Commission fosters, and taps, 'local horizontal capital'.(…)At the same time, networks also try to create support for European policies by distributing benefits and regulatory advantages to the actors in the networks, thereby creating output-legitimation" A.Héritier (1999)

consumer policy, one understands the Commission's shift towards more consideration for Consumer organisations and the interests they defend. The Council, which represents the member states, was in a more ambiguous position. While claiming the necessity of an EU consumer policy and supporting Treaty amendments in favour of a common approach towards consumer problems, it represents member states that were greatly divided on the conception of such a policy. As written in a Commission working paper:

> *"While agreeing with the underlying premises that market globalisation presented consumer protection with new challenges and that a balanced market is important for consumers, the Majority of Member states considered that a perfectly competitive market, fully taking into account consumer interests, does not exist. Hence, to a varying degree, they expressed support for an active policy at the Community level. (…)"*

Further the document acknowledges that the discourse is not followed by national support:

> *"Although the adoption of measures for the achievement of the internal market does not require anymore –since the Single European Act- unanimity, it was difficult to find sufficient political support for consumer policy acts and a common denominator between these approach"* [31].

There is a gap between intention and action because the contours of an EU consumer policy are still very imprecise. Rather, it appears as an opportunistic means to gain citizen legitimacy, as is shown quite explicitly in another Commission document[32]:

> *"The recent public debates concerning the Maastricht Treaty have highlighted the need to bring the EC closer to the citizen. Where better to start than with consumer policy which is concerned with concrete day-to-day aspects of life?"*.

What was probably not seen clearly at the time is that the argument was also reversible and that a consumer crisis of confidence could in return affect the legitimacy of EU institutions.

The pre-BSE period is marked by the convergence of two projects: the establishment of EU food policy and the development of a EU Consumer policy. Before the BSE (Bovine Spongiform Encephalopathy) "crisis", the Commission services already imagined the preparation of a general food law directive (Ottaway,1995). A consumer policy was also supported to enhance consumer confidence in cross-border trade. But there was no clear link between these intentions. In 1997, in the aftermaths of the crisis, the essential of the main responsibilities for food issues will be transferred to a Directorate General for the protection of consumers that did not exist just a few years before.

[31] Consumer Policy : Past Achievements, Commission staff Paper , 1999, Source : EUROPA
[32] Consumer Policy in the European Community – An overview, Commission document, DN :MEMO/92/68, source : EUROPA

4 European Parliament, food safety and consumer interests

In the beginning of the 1990s we have two EU policies in development: a food policy and a consumer policy - both developed for single market efficiency. The EU institutions, recoiling after food crises and the opportunistic behaviour of members of parliament (MEPs), will rapidly understand that no food policy is possible without a risk management policy. Pulling national food policies up to the EU level had a political cost that was addressed by the development EU food risk policy for the protection of consumer health and interests. The aim of this third part of the report is to show how the BSE, or rather the treatment of the BSE crisis by the European Parliament, succeeded in putting the "Consumer" (rather than consumption and although the "Consumer" was very ill-defined) at the centre of a new EU food policy.

Firstly (3.1) we show that the introduction of the co-decision procedure and the opportunistic positions of the European Parliament during and immediately after the BSE crisis (1996) have succeed in transforming the "factor consumption" into the figure of "consumer", protection of which will be the first aim of food regulation.

Secondly (3.2), we describe the main changes due to the food system restructuration in the aftermath of the BSE crisis. These changes led to a complete reorganisation of responsibilities for food issues in the Commission and the introduction of a food risk policy. Although two domains remained uncertain, this "new departure" for a EU food policy appears to have been the most significant change in European food policies since the Treaty of Rome.

4.1 New role and strategy of the European Parliament

The new Treaty of the European Union (Maastricht) introduced the co-decision procedure that formally changed the balance of power between the community institutions. The greatest impact came less from the European Parliament's new formal position in the structure, than from its ability to increase political pressure in raising awareness of an "EU democratic deficit" (Corbett et al.,2000). As argued by Farrell and Héritier (2002), it is indirectly, by the creation of informal institutions to facilitate negotiations between the European Parliament (EP) and the Council[33] that the co-decision procedure finally increased the power of the EP:

> *"Parliament won most of the concessions that it sought; its bargaining position was enhanced by its relative insensitivity to failure (its willingness to bring down items of legislation or block them), its different time horizons (it was more prepared to delay legislation than Council) and its possession of strategic resources (MEPs were better able than the understaffed Council to deal with tortuous conciliation procedures)".*

The following example will illustrate this bargaining between the EU institutions. It shows that the EP, supported by the Commission placed under great pressure by the Ortega report on BSE, contributed

[33] They argue that the formal rules governing the co-decision process have led to the creation of informal institutions which in turn have affected the course of constitutional change.

opportunistically to successfully introduce the figure of "consumer" that placed its footprint in all the post-1996 food regulations.

On 2 October 1996 the Commission submitted two proposals for regulations, one establishing a system for the identification and registration of bovine animals and the other regarding the labelling of beef and beef products. Those two proposals were based on Article 43 of the EC Treaty. Article 43 constitutes the legal basis for all rules concerning the production and marketing of agricultural products such as "beef" listed in Annex II of the Treaty and which contributes to the implementation of the objectives of the CAP (Common Agricultural Policy). Four months later, the proposals were debated in a plenary session of the European Parliament. After examination, the EP adopted an amendment designed to substitute Article 100a for Article 43. Article 100a is the legal basis when the aim and content of a regulation is the protection of public health or the consumer protection. This substitution would have been a matter of procedure if it did not imply a change of decision procedure. By changing article 43 into article 100a the proposals were placed under the "co-decision procedure" instead of the "consultation procedure". In the co-decision procedure the European Parliament co-decides with the Council while in the consultation procedure the Council decides and the European Parliament opinion is only consultative. The Commission accepted some of the EP amendments and merged the two proposals in one single amended proposal on the basis of Article 100a (co-decision). But a few months later, the Council re-amended the legal basis in favour of article 43 (consultation) and in April 1997 adopted unanimously the regulation.

The Commission brought an action for the annulment of the regulation before the European Court of Justice. The justification of the Commission was the following: although beef is listed in Annex II of the Treaty and consequently part of a common organisation of the market, the main aim of the regulation is not an objective of agricultural policy but an aim of protection of human health, especially in the background of the BSE crisis. The Commission recognised that "labelling" had no direct link with health protection, but as reported in the European Court report, claimed that "in the present case" (i.e. after BSE crisis), the measures taken were intended solely to provide consumers with information on the origin of the product and therefore certain characteristics of the production to assure that the product poses no risk to their health. The Commission insisted that the particular context was responsible for this regulation and therefore it should have been based on 100a. The European Parliament in supporting the Commission's request went further, establishing the link between labelling and consumer health that the Commission had not dared to make. For the EP, the "*principal, if not sole, aim was to create an uninterrupted chain which enables the consumer to check each individual stage of the process from the origin to consumption*". For its defence, the Council protested that the regulation did not primarily seek to protect human health but rather aimed to restore consumer confidence in both the market and the products in order to encourage stability in a market thrown into crisis by BSE. The protection of human and animal health was a "secondary" aim of the Regulation. This justified why, for the Council, it was rightly based on Article 43 and not on Art 100. The Court of Justice gave reason to the Commission and concluded that the regulation should have been placed under both articles, and not just on 43, and annulled the Council Regulation (EC) No 820/97 but preserved its effects until new rules were established on the subject.

What this example demonstrates is that at a certain point of EU history there was no other possibility but to prioritise objectives previously indiscernible: *consumer* or *market*. If. in the official discourse,

"consumer interests" had always been considered compatible with the producer interests in the single market, this was not the case anymore.

At the time of the hearing before the ECJ, all parties finally agreed that the regulation should have been based on both articles 43 and 100a. One wonders why at the time of the making of regulation this option was not retained and no consensual position emerged. By examining the amendments of the first parliamentary reading session, it appears that the most contentious issues between the institutions were whether or not labelling should be made optional or compulsory and whether or not the name of the country had to be reported in the label addressed to the final consumer. In a single European market where all goods are free to circulate, the Commission did at first not see any justification to oblige producers to label beef with the name of country of origin, therefore it supported an "EU" label, and based its first version of the proposal in article 43. The Council also shared this position and supported an optional rather than compulsory system of country identification. The EP Committee[34] understood the position as a market-oriented strategy to allow BSE countries to hide behind anonymous labels, while at the same time "BSE free" countries would be given a market advantage by putting their name on their beef products. For the EP, this unfair option based on the ignorance of the consumer was unacceptable[35]. Despite the practical difficulties to set up such a system, the EP committee stood firm:

> *"Obviously, this solution has certain drawbacks, chief of which being the need for a great deal of intervention, regulation and control of an administrative and managerial nature, and is therefore somewhat more costly. However, it is clearly more appropriate given the magnitude of the credibility problem we face".*

The EP went even further, asking for the extension of labelling to processed goods containing beef and beef products "within one year of the entry into force of the regulation". The Commission proposed a transitory period where the system would be optional until it would become compulsory. We know the end of the story: the Council interrupted the process of co-decision in changing the basis of the Treaty, voted on its own a regulation that retained the optional labelling with name of country until 2000 when the system was supposed to become compulsory. By interrupting the procedure, the Council did not succeed in avoiding the establishment of a compulsory system of identification but only to postpone it. The Council lost the judgment and had to pay the costs of the court procedure. But the regulation was not withdrawn and was left in place for implementation until another would substitute it[36]. Has the European Parliament really won the case? Certainly yes "in principle", as

[34] The Environment, Public Health and Consumer Protection Committee Rapporteur: Mr Mihail Papayannakis

[35] Quotation of the report of the Committee on the Environment, Public Health and Consumer Protection (Rapporteur: Mr Mihail Papayannakis) "the basic problem with the Regulation is that it provides for an optional rather than a compulsory system of labelling beef and beef products, even exempting some of the latter such as canned products etc. Your rapporteur has the impression that the authors of the Regulation took the following line of reasoning: consumers are worried and distrustful because when they buy the products concerned they do not know their origin and they may therefore come from areas or countries where BSE is rife. They will avoid this risk if they know that these products come from other regions. We will therefore entitle producers in 'other' regions to declare the origin of their products using certain specifications and therefore give them an advantage over producers in the 'suspect' regions, who will definitely not use the labelling system!"

[36] It was replaced a few years later by two new regulations that foresaw a compulsory labelling after a period of optional trial . Regulation (EC) N°1760/2000 of the EP and of the Council establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) N°820/97

"consumer interest protection" could not be ignored any more in the making of any related food regulations including ones related to the formerly protected agriculture domain. In practice, the victory is qualified. A new regulation with a compulsory labelling system is in force but not yet correctly implemented. The last FVO report published for the year 2002 reveals important failures in the implementation of the regulation on traceability and labelling of beef and minced beef[37].

The following points can be concluded from this event in relation to the role of the EP to introduce "consumer concerns" in the economic heart of the single market:

- Undoubtedly, "BSE One[38]" has to some extent been both pedagogic and cathartic (Westlake, 1997) and as put by a member of the Commission "*The BSE demonstrates the full panoply of the Parliament's post-Maastricht powers*". It gave to the European Parliament the opportunity to affirm its role of defender of the consumer, fully using its new found Maastricht Treaty powers to investigate 'alleged contraventions and maladministration' of the EU treatment of BSE.

- Whatever the economic, administrative practicable difficulties to set up a reliable compulsory system, the EP supported it and proposed the enlargement of the system to beef derived food products. This introduced into the debate the threat of enlargement to all meat products and not just beef products.

- The EP sent a clear signal to the two other main actors of regulation that from then on it will closely monitor decisions taken in the agriculture sector[39]. With *"pugnacious assertiveness of its right and its ingenuity in exploiting grey areas*" in beef labelling and traceability, the Parliament made it clear to the EU institutions that they would *'in future, be held fully accountable for their actions"* (Mann cit. Westlake,1996).

- In the EP intentions, traceability and labelling is a tool for consumer control over all steps of the food chain (regulation to "*enable the consumer to check each individual stage of the process from the origin to consumption*") Whatever the practicability of such a statement, it seems unprecedented that at the level of decision making, a regulation is envisaged to be a means of direct control by "consumers" on "economic actors".

- The measures undertaken after the BSE political crisis in the EU institutions, "in the name of consumer", have not been a response to consumer organisation campaigns. Although there were consumer organisation and NGO campaigns against Hormones in Beef and GMOs, there were none on animal feedstuffs before the BSE crisis. Is it the responsibility of the EU institutions to address this problem? Further investigation needs to be made on this point. At least "BSE" has probably ended the period where the consumer organisations were the legitimate and exclusive

[37] *"in the later stage of the production chain, from wholesale cutting and processing establishments through to the storage, distribution and retail stages, it was often not possible for the movement and origin of meat to be traced with a sufficient level of certainty"* Document SANCO 9505/2003 : Overview report of a series of missions carried out in all member states during 2002 in order to evaluate the operation of controls over the traceability of beef and minced beef. Dated 12/09/03

[38] "BSE one" was employed by interviewees at DG SANCO to design the crisis happened in 1996 and by reference to "BSE two" that happened in France in 1999 but had much less mediatic echo.

[39] As written in the report of the EP Committee already cited : (…) "It is obvious that restoring confidence calls for a radical overhaul of developments hitherto, particularly in relation to agriculture and the farming industry."

defender of consumer interests. The crisis has ruined the idea of a harmonious relationship between the consumer and market. But this was not to replace it by an antagonistic relation where the consumer should be protected from the market excess. It has introduced a new "figure", and perhaps more significantly a new "aim" in EC policy: the incessant quest for a "confident consumer" whose behaviour would be as predictable as was "consumption". The BSE crisis created a "consumer", independent from "consumption". This happened because of a particular emotional context when it was impossible to predict what the eventual number of BSE victims would be. One interviewee, employed in the EU veterinary services at the time of the BSE crisis, explained how almost "suddenly" after "BSE one", the consumer began to be a sort of incalculable, irrational but omnipresent figure in food related discussions within DG Agriculture.

"BSE one has brought the consumer into the picture (…) before, 4 years ago there was internal discussion, everyone talked of tonnes of food, tonnes of meat, and exports, imports, market balances (…) you calculate the production, remove the likely exports, add the likely imports and then you calculate the figure of consumption etc. But.. but.. do you have an independent estimate of the consumption?! the expected consumption? How do you know, independently how much people will eat next year?! You could ask people and they can give you their guesses. "well I think it's.." .... but it is not an exact science! Also again, because the meat industry is fragmented, its not like , its not like there are only 2 or 3 players in Europe and they have done market testing, questionnaires: "if the price of beef was this, would you eat more" etc. etc. "I think that was just the beginning of the consumer, well. the beginning,.. its always been there, the raison d'etre for producing food. But it's like far more present in peoples' minds. Before, it was much more efficiency driven, now people say : "but who is going to eat it ?" (interview MC, DG Agriculture).

4.2 A "new departure" for EU food policy

Before the outbreak, the Community lacked a "coherent concept of risk regulation" to accommodate the complexities of science-based decision-making[40]. The Commission relied entirely on the Scientific Committee on Foodstuffs (SCF) which, at least superficially, appeared to function well (Ellen Vos, 2000). The temporary Committee of Inquiry into BSE definitely demolished this image. Evidence of mismanagement, influence on the Veterinary Scientific and Standing Committees by "British thinking", policies of disinformation, manipulation preventing any debate between the different EC institutions, lack of cooperation between the DGs and between DGs and the relevant Scientific Committees was highlighted[41]. In response to what was quickly understood as a major EU institutional crisis, Commission President Santer delivered a solemn speech[42] before the European Parliament in which he declared his surprise at "*the lack of openness, coordination and rigour in the proceedings of*

[40] To aggregate the different interests, a committee structure (known as "comitology") was established. The "scientific committee on foodstuffs" composed of scientific experts, the "advisory committee on foodstuffs" consisting of interests groups representative and the "standing committee on foodstuffs" composed of national representatives, aim to incorporate in the decision-making process various social and economic interest, scientific advice and ensure the approval of the member countries in the implementing phase.

[41] "The report on alleged contraventions or maladministration in the implementation of Community law in relation to BSE, without prejudice to the jurisdiction of the Community and national courts"

[42] Bulletin EU 1/2-1997 Speech by Jacques Santer, President of the European Commission, to Parliament on 18 February 1997

the scientific committees", and admitted that *"Commission departments were not as effective as they might have been*". Before the MEPs, he promised a rapid and vast institutional and legislative reform affecting the administrative structure of the Commission, the system of scientific consultation, the decision-making process, the inspection controls and the Community legal bases. A few weeks later, the "New Departure" Commission document[43] was published, detailing the programme announced by President Santer. It started with a very general statement that seemed to apply to all Community policy:

> *"The principal objective of the new political departure is reinforcement of the protection of consumer health. For this purpose, food safety is a necessary prerequisite. Moreover, in order to restore the confidence of the consumer and answer concerns over some models of production in which productivity is over emphasised, it is also important to protect animal and plant health and to respect animal welfare".*

It was a clear inversion of political priorities: the principal aim was from now the protection of consumer health and not the limitation of food safety measures to restrict misuse due to protectionist intentions of member countries. But this formal rupture was immediately limited in a later paragraph that says "(food safety) *is also at the very root of a proper functioning of the market*"[44] as if the single market still had to be the ultimate justification. The substance of the document deserves to be detailed as it defines the basis of the future EU food policy. The Commission announces its intention to establish a risk policy that respects the following separations:

- responsibility for legislation separated from that for scientific consultation;
- responsibility for legislation separated from that for inspection.

In risk analysis, the Commission commits to approach the issue in three separate steps: through assessment[45], management[46] and communication[47] of the risks but without really entering into great detail on the highly criticised feasibility of such sharing[48]. The model which inspired the President was the U.S. FDA (Food and Drug Administration). As announced by Jacques Santer, the Community inspections were enlarged to cover the whole chain, following a "plough to plate" approach. In terms of institutional reorganisation, it was intended to place all the Scientific Committees dealing with food issues under the responsibility of DGXXIV renamed DG Consumer Policy and Consumer Health

[43] Communication of the Commission on health consumers and Food Safety COM(97) 183

[44] "Recent experience has clearly demonstrated that food safety is not only of concern to the consumer, but is also at the very root of a proper functioning of the market. Food safety is therefore not only a prerequisite for protecting consumer health but will also serve the interests of producers and those involved in processing and marketing of foodstuffs and relevant agricultural products.". (IP 97/360 Brussels, 30 April 1997 Consumer Health : towards a proper food policy)

[45] "Risk assessment allows the identification and evaluation of hazards to consumer health, based on an estimation of the probability of their appearance in a specific situation"

[46] "The essential task of risk management is to contain or reduce the level of risk identified through the assessment procedure in order to achieve an appropriate level of protection".

[47] "through risk communication, information is exchanged between the parties concerned on the nature of the hazard and the measures to be taken to control it."

[48] Numerous are the observers in political science who expresses scepticism on this sharing, notably in case of scientific uncertainty. Ellen Vos: "What is strikingly lacking in the 1997 New Approach of the Commission is the manner in which the Community needs to deal with uncertainty, to define what is acceptable risk, and thus to define the role of the precautionary principle as a regulatory principle of food regulation. In other words, attention should be paid not only to the scientific facts, but also the manner in which one deals with them." (Ellen Vos, 2000).

Protection and withdrawn from DGs Industry and Agriculture in order to avoid conflicts of interest in the decisions of the Committees. Furthermore, the work of the scientists appointed to the committees will be based on the principle of independence, transparency and excellence.

Undoubtedly, the reform announced by Santer kept its promises as it designed the principles on which an EU food policy including a risk analysis policy should lay. But it failed to be convincing on two important points, the way to deal with risk assessments in cases of scientific uncertainty and the inherent contradictions of the new policy agenda of the EU and its duties as a trade partner in the WTO.

> *"it is important to ensure that our internal legislation and procedures provide adequate reassurance for our trading partners and that our exports do not encounter unjustified restrictions in gaining access to the world market. (…)Decisions on food safety are taken in the context of the rights and obligations that flow from them, in the WTO, in other international organisations and bilaterally."(ibid)*

The EU stands in a paradoxical position. If the internal market cannot be a priority with regard to food safety, if the objective seems clearly separated, then in the international arena the EU is committed to apply slightly different rules[49].

5 Formal division of responsibilities for food issues at the EU level in 2003

This part describes the reorganisation of the post-1997 EU food system. Firstly (4.1) we describe briefly what appeared to be the shifts of responsibilities caused by this reorganisation. Secondly (4.2) we describe the shifts that make DG Consumer Health and Protection the main unit responsible for food safety along the entire food chain. Thirdly (4.3) we describe how the responsibilities for other food issues are shared between others General Directorates.

5.1 The reorganisation of the EU food system following the BSE crisis (1997)

The structural reorganisation that followed the BSE crisis has been described in documents published by the European Parliaments and the Commission, and also analysed in academic detail in political science from different angles and perspectives, and at different periods of the evolution of the system (for instance Barling (1998), Vos (2000), Millstone E. (2002) etc). When a first reorganisation was envisaged in 1997, the Scientific Committee for Food (SCF) and the Scientific Veterinary Committee (SVC) were placed respectively under DG Industry (DGIII) and DG Agriculture (DGVI), responsible for providing assessment on food safety and quality, animal health and welfare. In 1997, a first

[49] 'The Commission is at pains to point out that international guidelines on risk assessment are to be adhered to by the committees, and that the treaty obligations laid down in the agreements at the end of the Uruguay round of GATT managed by the WTO retain supremacy'. (Barling,)

reorganisation occurred. It lay essentially on the modification of the commitology system: all the scientific committees for issues where consumer interests are at stake were transferred to DG XXIV (Consumer health protection). The internal market "product warning system" was transferred from DGIII (Industry) , the Office for Veterinary and Phytosanitary Health Inspection (essentially food and feed control) from DGVI to become the Food and Veterinary Office (FVO).

A second reorganisation occurred in 1999 with Commissioner Byrne. DG XXIV is renamed DG Health and Consumer Protection (DG SANCO). The Agency model of the FDA desired by the European Parliament (Buonanno, 2003) is abandoned for a system judged better adapted. The EU institutions opted for an Authority with strict separation between assessment and management. In the White Paper, the Commission explains its preference for a strict separation of tasks:

- *Firstly, there is a serious concern that a transfer of regulatory powers to an independent Authority could lead to an unwarranted dilution of democratic accountability.(…)*
- *Secondly, the control function must be at the heart of the Commission's risk management process if it is to act effectively on behalf of the consumer, notably in ensuring that recommendations for action arising from control are properly followed up. The Commission must retain both regulation and control if it is to discharge the responsibilities placed upon it under the Treaties.(…)*
- *Thirdly, an Authority with regulatory power could not be created under the current institutional arrangements of the European Union, and would require modification of t he existing provisions of the EC Treaty*[50].

The result of this second reorganisation in 2002 that established a food law and a European Food Safety Authority is the repartition shown in **Fehler! Verweisquelle konnte nicht gefunden werden.**.

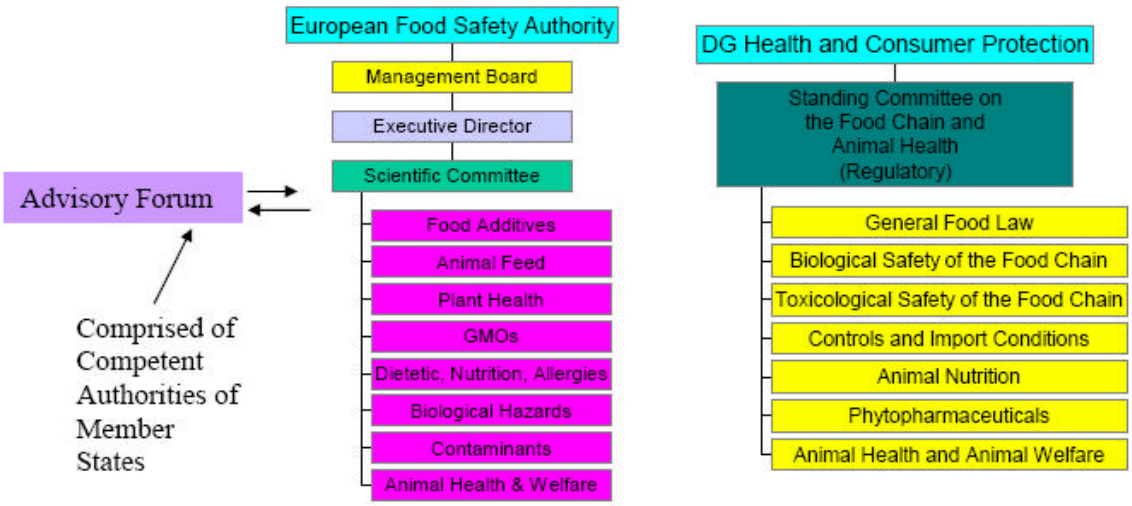


Figure 2 : A strict separation between risk assessment and management
(source: from Laurie Buonanno, 2003)

[50] COM (1999) 719 final White Paper in Food Safety

5.2 The formal attribution of DG SANCO since 1997

Since 1997, the responsibility for food issues lies on a unique Directorate General: DG SANCO. Four of the seven directorates of DG SANCO are devoted to Food Safety (3) and Food Control (1). One directorate is responsible for Consumer affairs other than food. One directorate is responsible for Public Health and deals with nutrition issues. SANCO is responsible for

- ensuring a high level of food safety through farm-to-table measures, and
- ensuring effective control systems and evaluate compliance with EU standards in the food safety and quality, animal health, animal welfare, animal nutrition and plant health sectors within the EU and in third countries in relation to their exports to the EU;

It has in charge the management of the relations with the European Food Safety Authority (EFSA), and the management of risk (completing assessments by the EFSA). It is responsible for farm animal welfare. In conformity with article 152 of the Treaty, DG SANCO units have in charge to assure "a high level of human health protection" in the development of all Community policies. In this frame DG SANCO expresses nutrition recommendations in the Community policies and implements Public Health programmes.

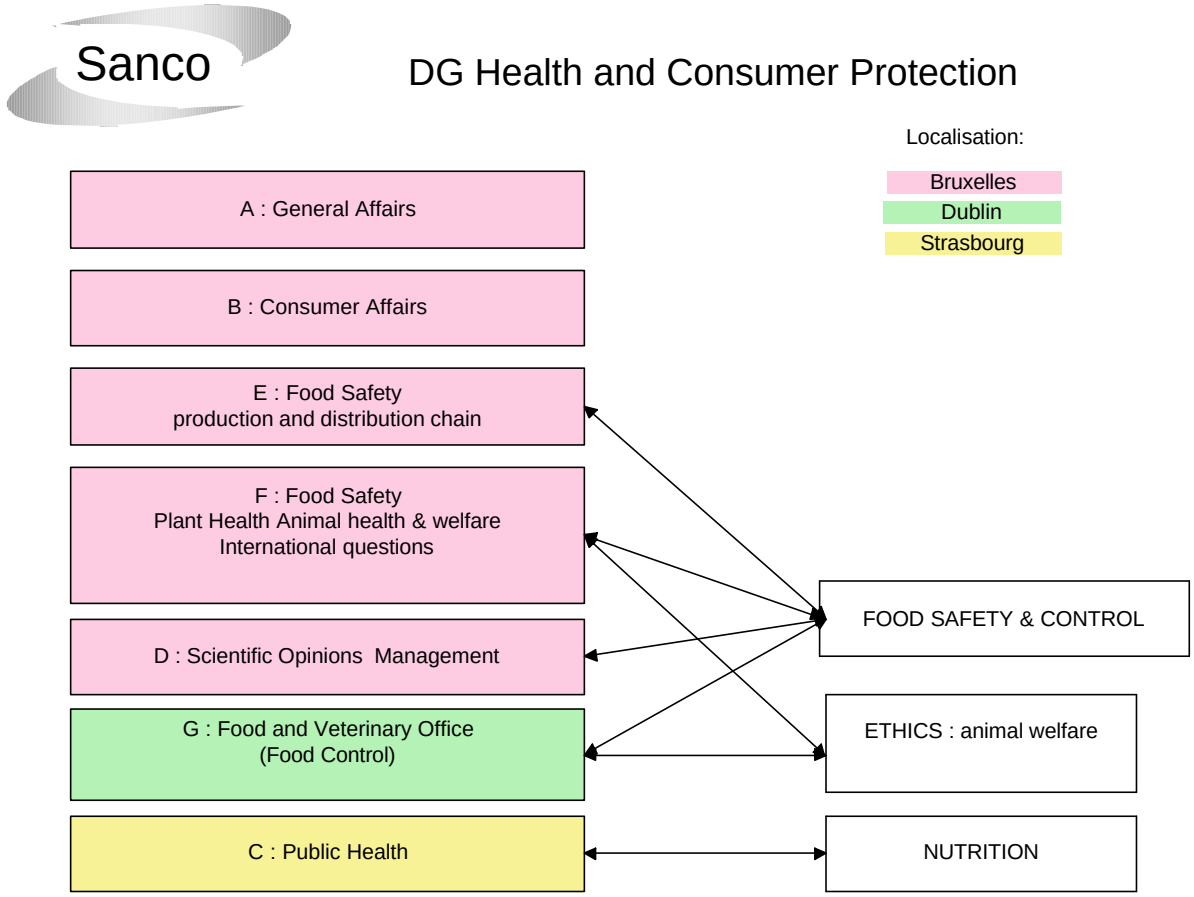


Figure 3 : Organisation of DG SANCO related to Food issues

5.3 Food responsibilities outside SANCO

Quality policy (according to the restricted meaning of the Commission which excludes nutrition and safety) is the only core issue that is not dealt by DG SANCO. Rather, responsibility lies on **DG Agriculture**. After the 1997 reorganisation of Food policy, only one scientific committee dealing with food remains in DG AGRI (the Scientific Committee on Designations of Origin, Geographical Indications and Certificates of Specific Character) while all the others are placed under DG SANCO. A standing committee dealing with Organic Farming gives opinion on the organic standard. All the management committees in DG AGRI are involved in decisions about the specifications and the value of the products. There is no institution within DG AGRI in charge of the control of animal welfare, but farm animal welfare concerns is a justification for the decoupled system in the Common Agriculture Policy Mid-Term Review adopted by the Commission in July 2002.

Amongst the missions of **DG Trade**, three can be related to Food policy :

- to define the trade interests of the EU;
- to negotiate bilateral, regional or multilateral agreements on the basis of negotiating directives proposed by the Commission and adopted by the Council ;
- to monitor and ensure the implementation of international agreements, notably SPS (Sanitary and Phytosanitary) and TBT (Technical Barrier to Trade) WTO agreements.

DG RTD (Research) supports various fields of research on food. Food, Nutrition and health is Key Action 1 of the 'Quality of Life and Management of Living Resources Programme' implemented under the Fifth Framework Programme (1999-2002) of DG RDT. The Sixth Framework Programme (2002-2006) includes the theme 'Food Quality and Safety'. Nutrition-related projects are also funded by the EU such as the Eurodiet project (1998-2000) on nutrition and healthy lifestyles; and the European Prospective Investigation into Cancer and Nutrition (EPIC). DG RDT promotes research on biotechnologies and application of GM technologies. 81 projects related to GMO have been funded since 1985.

DG Environment is concerned by the impact on the environment of food production (GM issues, pesticides etc.).

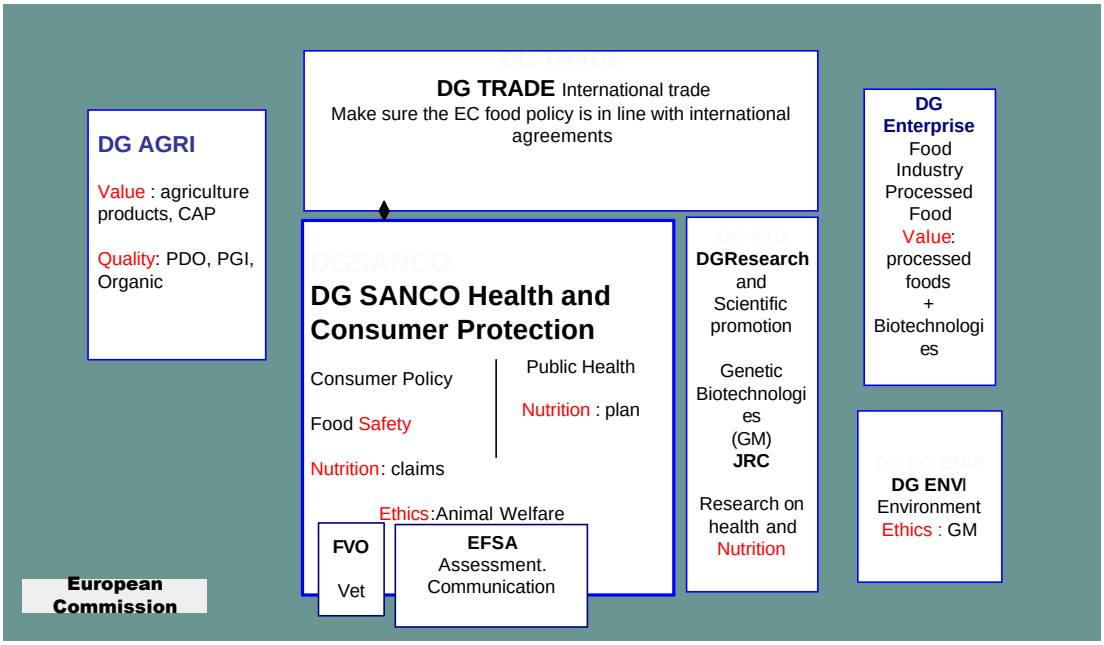


Figure 4 : Repartition division of responsibilities for Food issues

6 "Nutrition", "safety", and "quality" food issues and Institutionalisation of consumers

ince the consumer appeared in the debate, the constraints that this new figure brought into the EU food landscape have been interpreted in many ways by the actors of the food chains. This new EU "consumer" appears to have many facets. How the stakeholders, consumer organisations, NGOs, international organisations and the different units of the directorate generals in the Commission that deal with food issues have framed (or institutionalised) the consumer was an important expected output of our survey and has been particularly scrutinised during the data analysis phase. The objective was to understand to what extent the actors' solutions for food issues were linked to their understanding of consumer problems.

The following sections examine how three food issues Nutrition (5.1), Quality (5.2) and Safety (5.3, 5.4, 5.5) are handled in the European Commission and, when relevant, the impact this has on the positions of stakeholders, NGOs and Consumer organisations in relation to their representation of consumers. The changes in responsibilities are too recent to draw important conclusions at this stage. But some conclusions on what appears to be a fragmentation of the consumer at the EU level will be given in the final section of the report.

6.1 Nutrition: a discrete approach

The debates in the European Parliament that we previously examined would imply that the opposition between "Consumer" and "Market" interests would be overtaken, and that the different components of

an integrated food policy would address simultaneously one and the other interests. But when looking at food regulations and institutions in the EU, by key food issues (nutrition, safety, ethics, value for money, quality), it appears that the EU institutions can not really manage to treat these two aspects in a more integrated way. As we will show, in the domain of nutrition there remains a separation between nutrition as a public health issue and nutrition as consumer choice. Despite a growing opinion calling for an integrated approach (expressed by NGOs and stimulated by the World Health Organization debates on nutrition), the EU approach remains "discrete".

It is recognised within the EU institutions that no EU nutrition policy as such exists and that in the matter a lot has still to be done to be in line with the Treaty, particularly since the introduction of article 152: "*a high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities*"[51]. All European and more generally Western countries face serious public health problem in relation to nutrition, such as problem of deficiencies in micronutrients, diet low in fibre and anti-oxidants, high in fat and salt, increasing intake of fat high-fat meat and dairy products, creating obesity or cardio vascular diseases. Over the past decade, the three main EU institutions have expressed important concerns towards nutritional problems and the new challenge they pose. But it seems difficult to address these problem according to an integrated approach as advised in in WHO Europe (2000) and EU presidency reports (2000).

The proposition of the EU French Presidency (2000) to draw the lines of a EU nutrition policy was in 2003 not been effectively followed. Among its propositions : food and nutrition monitoring all over the EU, European scientific expertise on nutrition, European training programmes in Public Health Nutrition, Promotion of nutrition in and all through EU policies , development of EU dietary guidelines, and information on products for consumer protection, only the last one is in way of realisation. According to the Commission, the EU framework for dietary guidelines which was a major output of the EU funded project Eurodiet(2000) has been "*put on hold since the establishment of such guidelines would require a level of scientific consensus in Europe, which is presently not yet achieved*"[52]. The lack of consensus, clarity or coordination does not come only from the national scientific communities. At the political level, in the three main EU institutions, there is still a gap between intentions and actions.

In its White Paper on Food Safety (1999), the Commission is considering the development of a "comprehensive and coherent" nutritional policy. This means a policy able to involve the different actors of the food chain, the experts on nutrition and the intermediate institutions. The white paper also foresees that "*the scope of the Authority should be to provide scientific advice and information to the Commission on all matters having a direct or indirect impact on consumer health and safety arising from the consumption of food. (…) Its remit will encompass both risk and nutritional issues*"(White Paper on Food Safety, 1999). But the lack of conviction of the Commission is perceptible by the very

[51] " Until now, however, despite the fact that the Treaty encourages Member States to co-operate on public health policy matters, with the help of the Commission, there has been no European Plan of Action on Nutrition, nor any common European dietary guidelines. As a result it is not just the strategies for improving nutrition which have varied across the Union, the basic healthy eating messages have not been totally consistent. Given the wide circulation of information that we observe now, this issue could become a problem if it is not addressed". Report ordered by the French Presidency in 2000, published by the Société Française de Santé Publique : "Health and Human Nutrition – Elements for European Action".

[52] Policy initiatives on nutrition , presentation page in SANCO website source : EUROPA (http://europa.eu.int/comm/health/ph_determinants/life_style/nutrition/nutrition_policy_en.htm) source :

limited detail on how to proceed. Although this document gives practical orientation related to food safety, nothing is developed to give substance to EU nutrition orientations (Millstone et al, 2000). Nutrition clearly separated from any safety issue seems to have been added without a deep conviction. Indeed, the person responsible for nutrition in DG V confided to a specialised journal on food: "*We had enormous difficulty just getting one paragraph [on nutrition] in [the white paper] (EU Food Law, May 2000)*".

A Council resolution[53] was published in December 2000 nearly one year after the White Paper(1999) and a few months after the French Presidency report (2000). Following some of the conclusions of the report, the resolution officially recognizes the necessity of giving nutrition ("as one of the key determinants of human health") a particular attention and "that the state of health of the population can therefore be protected and improved by targeting action on nutrition." The resolution acknowledges that a "poor" diet is responsible for many fatal illnesses in the EU, such as cancer, heart disease, obesity, etc. But , considering " that the diversity of food cultures throughout the European Union constitutes a valuable asset that ought to be respected", the Council foresees for the EU a role limited to coordination and monitoring of nutrition policies that must be elaborated at the state level. In other words, the principle of Subsidiarity must apply, which means that the EU should not have any power of initiative on this food issue. The Commission is invited to allow for nutritional health to be taken into account when drawing up and implementing any relevant Community policies, to develop tools to monitor nutritional health and its determinants, to support research into the links between health and nutrition, and last but not least to develop the use of nutritional labelling, by adapting it to the needs of consumers.

The European Parliament does not have any clear view on an EU nutrition policy, but rather an opportunistic one. For instance, the EP firmly opposed that nutrition should be in the remit of the European Food Safety Authority (EFSA) committees. The main argument was that for the public, Safety is a clear mission of the EFSA, while Nutrition would blur that signal: *"I would ask the Commission and the Council to listen to this united voice and to adopt 'European Food Safety Authority' as the title of the institution. Keeping the word 'safety' in the title of the authority will give a clear signal to consumers as to its purpose and goals[54]"*. Behind this is the idea that nutrition is too controversial to be clearly understood by consumers. It should be noted that at the EU level, consumer organisations do not follow the EP line on this point.

The result is an institutional and regulatory division between a nutrition policy oriented towards public health, addressed to citizens; and a nutrition policy oriented towards consumption and addressed to consumers.

[53] Council Resolution of 14 December 2000 on health and nutrition(2001/C 20/01)
[54] Avril Doyle (EPP-ED, Ireland), Report amending the Commission proposal under the co-decision procedure (1st reading) on the directive laying down the general principles and requirements of food law, establishing the European Food Authority, and laying down procedures in matters of food, July 2000.

6.1.1 Institutional division

DG SANCO	**CONSUMPTION PROTECTION (Unit D,E,F,G)**	HEALTH PROMOTION (Unit C)
Remit	- Animal and Plant Health Food Control and Safety from Farm to Fork - Consumer information (Labelling regulations)	- **Public Health**
Budget in 2001	**- €564.5 Million :** (**€21, 2** M for consumer policy; **€**564,5 M for Animal and Plant Health)	-€54.5 Million
Location	**Brussels**	**Luxembourg**

Figure 5 : Remit and budget , source EUROPA website

It is noticeable in this table that in 2001 the consumer policy budget[55] equals almost half the overall budget on public health.

6.1.2 Regulatory division

6.1.2.1 a- Nutrition and Health promotion

DG SANCO established in April 2002 an "ad hoc group on nutrition" under the "Inter Service Group on Health" staffed from various policy areas within the Commission, in order to identify actions to be undertaken in the field of nutrition. One of its mandate includes the exchange of relevant information, discussion on the measures needed to develop nutrition policy, and the identification of common actions to be undertaken across policy areas (Status Report on the EC's work on Nutrition, 2002). The work plan for 2004 for the implementation of the programme of Community action in the field of public health (2003 to 2008), "proposes to developing work to identify best practice and to take forward coherent strategies on nutrition and physical activity in the Community, which should provide recommendations and support to Member States. Emphasis will be on innovative measures and approaches to improve dietary habits, excess weight and obesity, and physical activity habits in all population" How this can be effectively achieved? This point is not developed. Another important action of the Commission for nutrition as public health is to ensure that public health determinants are taken into account in the other Community policies. According to my interviewees at DG SANCO

[55] EU Financial report 2001, Luxembourg: Office for Official Publications of the European Communities, 2002 also available on Europa website http://europa.eu.int/comm/budget/pdf/execution/execution/financialreport01/rapfin_en.pdf), p82-83

(Unit C - Health promotion), "Health" being not recognised as a Community prerogative, the possibility of action is rather poor for this small unit based in Luxembourg far from the active Brussels centre. Community policies such as the Common Agriculture Policy, common fisheries policy, Internal market policy , pillars of the EU single market are, not always compatible with public health recommendations, and the standing committees in these areas representing member states tend to reject health considerations, invoking the principle of Subsidiarity.

As put by one interviewee with responsibilities at unit C of SANCO:

> *"Health is not a Community attribution*[56]*. Art 152 defines what the Community must do in the health domain, or rather it says what it should not do. Article says clearly that health is a competency of member states and that the domain of activity of the Community is simply to control there is no drift in the other policies that could be harmful to health*[57]*."*

The role of the Division of Health Promotion is limited to that of advisor in the wording of food campaigns within the Member States. During the interview, acknowledging some pressures from the member states, one civil servant explained:

> *"anyway, we are hidden behind agriculture (DG AGRI). Sometimes we are called out by member states who tell us : you can not do that! But it is marginal. We are hidden in interface behind agriculture which pass contracts and give final agreements*[58]*"*

In a European Parliament document, another responsible in the former DG V shows some awareness of the minimal room for manoeuvre they have in their attribution:

> *"(..) the public health mandate of the European Union is relatively new. Not only is it limited to prevention of diseases and promotion of health, it also excludes health care. It's also limited by those actions that can only be done better at European Union level than at a national level, and is rather limited in economic and financial terms"*[59].

A "cultural" irreducibility of nutrition habits would justify why no EU public nutrition policy has not been yet possible: "*Health, it's to big, it's too complicated, it's demanding.. it's too much linked to the culture, there's too many differences from one State to another*". But the main argument is that the CAP needs compromise: "*it's like you see a train running, you cannot oblige it to change 90° just like that, time is needed, but we think about it*"[60].

[56] Interview performed in French : « La santé n'est pas une attribution communautaire »
[57] « L'article 152 définit ce que fait la communauté dans le domaine de la santé, ou plutôt il dit ce qu'il doit pas faire dans le sens que l'article dit clairement que la santé est une compétence des états membres et que le domaine d'activité de la communauté est simplement de contrôler qu'il n'y a pas de dérives dans les autres politiques qui puissent nuire à la santé" (M. D, DG SANCO Unit C, interview April 2003)
[58] "De toute façon, on est caché derrière l'agriculture. Quelque fois on est interpellé par les Etats membres qui nous disent vous pouvez pas faire quelque chose comme çà! Mais c'est marginal. On est caché en interface derrière l'agriculture qui passe les contrats et donne l'accord final." " (M. D, responsible at DG SANCO unit C , interview April 2003)
[59] Mr Jan Ole GUDMUNDSEN, DG V (Health promotion) Minutes of the joint meeting of the Health Forum Intergroup and the Food and Health Intergroup held on Wednesday 16th September 1998 in, European Parliament, Strasbourg, on the subject of Nutrition, Food Policy and Public Health in the EU
[60] M. D, responsible at DG SANCO unit C , interview April 2003

Commissioner Byrne, head of SANCO, asks for strengthening of Article 152 to include the harmonisation of regulations in specific areas in order to leave decisions taken by the courts: *"These decisions should be made through an accountable, legislative process"*[61].

6.1.2.2 b - Consumption protection: nutrition issues and labelling regulations

The other remit of the EU institutions on nutrition, as programmed in the WP, is to produce regulations on information and labelling of foodstuffs. If the nutrition and public health activities are "hidden" in Luxembourg, the regulation of nutritional labelling is an activity well developed and well supported by the Community.

"Labelling People in Brussels"[62] - as called by our interviewee in DG Luxembourg to designate his colleagues in the SANCO unit working on nutritional and functional claims -have been working on claims[63] issues closely with the stakeholders, consumer organisations and NGOs, for more than three years. Positioned by Commissioner Byrne as "high priority"[64], the Commission proposals on nutritional and functional claims have been widely advertised and benefited from important visibility.
These two approaches reflect two coexistent models in nutrition regulation/policy; the more powerful (in terms of economic, symbolic and network resources) is the model that addresses the consumer as shopper/buyer, the other still marginalised is addressed to the public consumer (as citizen). We schematise this in the following table as a point of departure for future analysis, and comparison with TIF country reports:

[61] As reported in Health Forum Intergroup. Meeting of the Public Health Working Party 29th January 2003, European Parliament, Brussels, "The future of public health in Europe" (minutes).Doc EPHA.
[62] Les "gens de l'étiquetage"à Bruxelles
[63] The WP on Food Safety justifies the necessity of a EU regulation on nutrition labelling in terms of Food Safety (avoidance of specific adverse health effects), Consumer interests (must not mislead), and nutrition for specific needs: food supplements (i.e. concentrated sources of nutrients such as vitamins and minerals) and fortified foods(i.e. and foods to which nutrients have been added).
[64] SPEECH/03/87 David BYRNE European Commissioner for Health and Consumer Protection Health, Nutrition and Labelling Address to the Environment, Public Health and Consumer Protection Committee of the European Parliament Brussels, 19 February 2003

CONSUMER ORIENTED model	CITIZEN ORIENTED Model
- individual choice, - consumer, - individual risk, - individual responsibilities - consumer **arbitrage** between personal cost/benefit - **actors/agencies** involved : stakeholder and consumer associations - **solutions** : labelling, claims - information leads to education - food standards - **main criticisms** on this model : vested interests, blur barriers between food/medicine, education/information, social inequality, systematic packaging, - defensive strategy : involve scientists, vulgarisation of scientific knowledge , information battle for a well informed consumer	- collective health, - citizen, - public burden, costs - public responsibilities, - public **arbitrage** between majority/minority - **actors/agencies** involved : NGOs health, environment, agriculture no stakeholders, weak participation of consumers - **solutions** : dietary guidelines, CAP reform - education leads to understand information - action on public catering - **main criticisms** on this model : do not respect diversities, no scientific consensus, no trust and no consumer choice, heavy, bureaucratic, - defensive strategy against criticisms: involvement scientists, NGOs with wide environmental, agriculture concerns, studies, statistics, information

The division between "consumption protection" and "health promotion" is also reflected by the existence of two types of lobby-players.

EPHA (secretariat for the Health Inter-group of the European Parliament) is an umbrella structure of non profit organisations, funded by the Commission, that deals with nutrition as a public health issue. EUFIC is a structure subsidised by important food and beverage industries. Put simply, while the first is a structure well established with experienced staff and convinced that there is a need for an EU public health policy including nutrition to limit the effect of the trend toward globalisation of economies, the second, newly installed in Brussels aim to provide simple messages on nutrition to press and media, targeting the public. The latter was born from the idea that consumers were ill informed because of misinterpretation of the nutritional information by intermediate such as media or politics and that there was a need for a direct canal of information from expert to consumer. *"EUFIC acts as a vital link in the communication chain by channelling information gathered at the source - primarily from nutrition and food safety experts - through to the consumers*[65]*"*. Since the White paper and the priority given on the regulation of health claims, EPHA has turned on the debate on claims, while the CAP and its possible consequences on food supply and demand is left out. Both EUFIC and EPHA are in position to lobby the consumer protection unit which deal with labelling and claims questions at DG SANCO Brussels, but they seem to have no direct contacts with the Luxembourg unit. Although some positions still exist in member countries such as the interdiction of claims, nobody at the EU level represents this opinion.

[65] EUFIC, Who are we ?. http://www.eufic.org/gb/what/what.htm

Both EPHA and EUFIC seem to be more or less formally the consumer representative-interlocutors of the Commission and Parliament regarding nutrition issues in place of consumer organisations which have no specific knowledge to share. EUFIC does not claim to represent consumers, and has no official representation near the Commission, but this small organisation based in the European quarter of Brussels is made visible by a very good use of the Internet and the well supported communication skills of its responsible to provide analysis from the last surveys undertaken by the food industries on consumer behaviour, commented by scientists. EPHA who is a formal interlocutor of the Commission positions, and a formal structure in the European Parliament constructs its discourses related to food and nutrition, in the name of "consumers". Ill-equipped, the consumer organisations can not compete with them on the issues related to Nutrition. They do not have the communication power of the food industry neither the necessary knowledge that is needed to produce a coherent discourse in the very controversial and emotional discourses on nutrition.

6.2 Quality: a CAP reform discourse

There is no unique official definition of 'Quality' and 'Quality Policy' validated by the European Institutions. Quality has a multidimensional meaning. It includes several aspects that can be put in a hierarchical range. The Commission distinguishes between "non-negotiable" and "relative" or "optional" aspects of quality[66]. This can be schematised as follows:

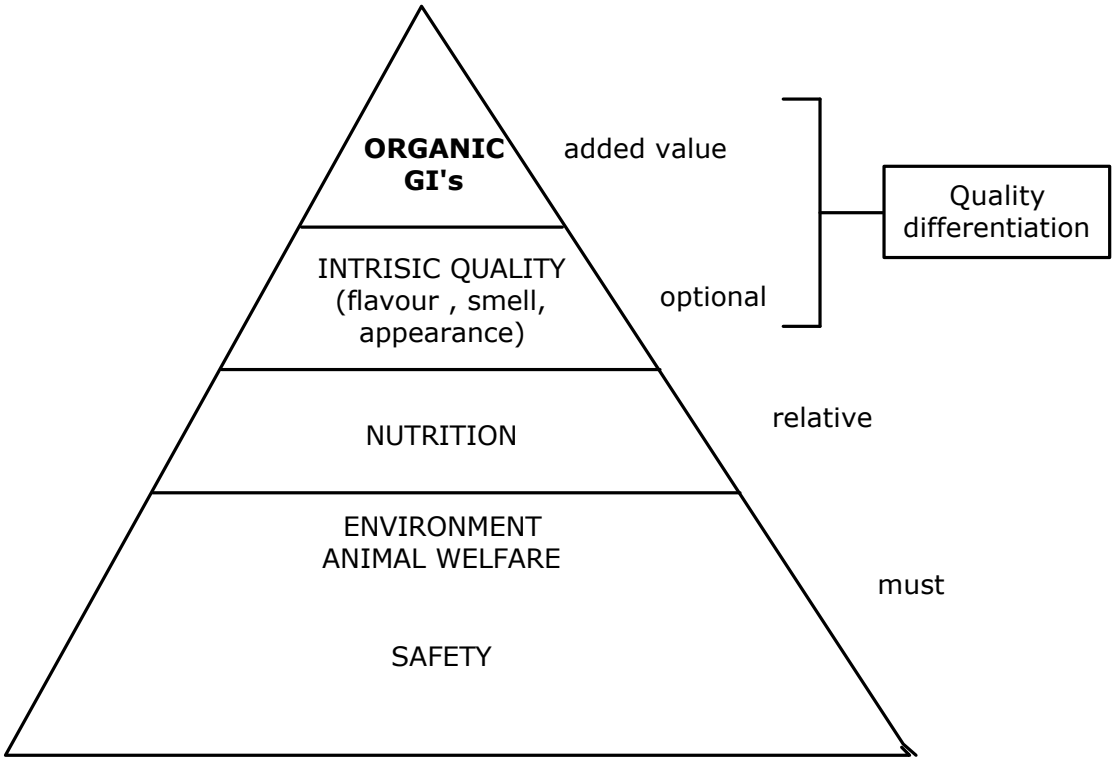


Figure 6 : Schematisation of the DG Agriculture definition of "quality"

[66] Franz FISCHLER, Quality matters A new focus for agricultural policy, CIAA - European Food Summit 2002 Brussels, 12 April 2002,Press release SPEECH/02/149, or Quality webpage presented on DG Agriculture website http://europa.eu.int/comm/agriculture/foodqual/quali_en.htm

This definition[67] has a level of generality that is too high for it to be of use here. It is a socially constructed and contested notion in the EU institutions as well. Another way to understand the recent emphasis of quality in EU food policy is to explore how the expression is used in the official Commission document, speeches and regulations and for what purposes during the last decade. We particularly paid attention to these discourses in relation to the consumer.

6.2.1 EU discourse on quality

When announcing the new harmonisation method in the perspective of the achievement of the single market, the Commission committed itself to no longer put forward proposals for the harmonization of quality specifications which were not related to the protection of public health. Instead, the Commission proposed to encourage industries to develop their own quality policies based on the use of voluntary instruments. One decade later, in 2000, the term "quality" reappears in Commission proposals, in numerous speeches and is object of an unprecedented campaign of communication.

In the public and official version, as it appears in the Commission website (2003), and in the interview or speeches of members of the Commission, the EU policy to promote food products is almost entirely included in three key-regulations on PDO-PGI, CSC and organic production all issued in 1992[68]. However, when examining the justifications given in these regulations, the expression "Quality" was not particularly emphasised. These regulations were proposed and adopted first of all for economical reasons (better balance between supply and demand; and for the rural economy), and only in fourth place as a response to consumer demand for food quality[69]. What we would like to show now is that the structural reorganisation that occurred after the BSE crisis and the preparation of the Common Agricultural Policy Mid Term Review (MTR, known also as the CAP 2000 reform) are responsible for a shift, if not towards a quality policy as a whole, but at least towards an EU discourse on quality addressed to consumer-citizens. After investigation of all the documents published in the Commission discourses (DG AGRI, DG SANCO) and in which the word quality was used, we made the three following observations:

1- The structural reorganisation in 1997 resulted in the creation of DG SANCO responsible for all matters of food except the application of the regulations on geographic appellation and organic production, which lay with DG AGRI. We will not detail here this reorganisation which has been many times described[70]. But it places "quality" responsibilities outside of SANCO and under the sole responsibility of DG AGRI.

2- The EU discourse on quality built and promoted from 2000 is found when the reorganisation of the food-production chain, and in particular the agricultural sector, is at stake. In 2000 and 2001 a major part of the speeches of Franz Fischler, the Commissioner of DG Agriculture,

[67] published in the DG AGRI website http://europa.eu.int/comm/agriculture/foodqual/quali_en.htm)
[68] designation of origin and geographical indication (regulation 2081/92/EEC), 'specific character' (regulation 2082/92/EEC); on organic production of agricultural products (regulation 2092/91/EEC)
[69] Extracts from Council Regulation (EEC)No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 208, 24.7.1992, 1)
[70] Green paper : The general principles of food law in the European Union COM(97) 176 final , notably

published on the Europa website had a special focus on "quality"[71] to explain the MTR to stakeholders and European citizens. "*a shift to the second pillar, says Franz Fischler, is a shift to more quality*"[72].

3- "Food quality" in almost all the documents examined does not include "safety". Rather they are clearly differentiated by the systematic use of the expression "food safety and quality". In the documents "quality" implies a subjective judgement from the final consumer, Thus "quality" is the result of different processes, packaging, labelling for equivalent products which depend on the creativity of the producers and processors, "quality" aims to segment the market, to allow a differentiation between competitors for the satisfaction of the final consumer. For all these reasons, and unlike safety neither subjective, nor a differentiator, the management of quality must be left to private initiative. The discourse on "quality promotion" developed recently by the EU challenges the view that the main instrument of agriculture regulation coming from Brussels, i.e. the "CAP" has tended to harmonise and standardise EU agricultural production. In the MTR (Mid-Term Review of the Common Agricultural Policy) , the "Consumer demand for quality products" has been introduced to develop the vision of a more integrated vertical chain from farm to fork, aiming to satisfy the buyer and not to subsidise intensive agriculture. Quality being a matter of private initiative, the EU considers its role as one of reward and consumer protection[73]. In order to protect consumer interests, the EU seeks to promote "*stringent quality management*" by the adoption of international norms in Quality Assurance schemes such as "*contract farming*" to give a guarantee to the consumer that the products fulfil clearly defined quality standards. There is also another "liberal" justification for distinction between Safety and Quality. Safety is a domain which necessitated public intervention because poison threats, epidemic, environmental pollutions and all types of unpredictable events can affect the "smooth" functioning of the market. Quality is a domain where unexpected events that can decrease the quality of the product is solved by the market itself but does not lead to any failure. In general, private actors are responsible and accountable for the quality of their products.

The main EU "Quality" Regulations

(a) ***designation of origin (regulation 2081/92/EEC)***: means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

— originating in that region, specific place or country, and

— the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area;

[71] Several consultation and chat have been organised by DG AGRI in collaboration with SANCO to promote the "quality" of food that are published in DG AGRI website.

[72] Speech Franz Fischler Quality matters A new focus for agricultural policy CIAA - European Food Summit 2002 Brussels, 12 April 2002

[73] ": "*We, the policy makers, (…) want to create a framework which rewards the production of quality. However, we should not forget that it is the consumer who decides what he or she considers high quality. And it is the private sector, the farmers together with the food industry, which has to provide this quality.* " Speech Franz Fischler 'Quality matters A new focus for agricultural policy CIAA' - European Food Summit 2002 Brussels, 12 April 2002

(b) ***geographical indication (regulation 2081/92/EEC)****:* means the name of a region, a specific
place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:
— originating in that region, specific place or country, and
— which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area

(c) ***'specific character' (regulation 2082/92/EEC)*** means the feature or set of features which distinguishes an agricultural product or a foodstuff clearly from other similar products or foodstuffs belonging to the same category.
(source: EUROPA website)

6.2.2 Discourse on quality in relation to consumer

The MTR proposition about Community subsidies shifting from "producer-support" to "production-support" has been perceived negatively by farmers. The discourse on quality developed by the Commission can be related to the willingness of the Commission to redefine what in the work of farmer should be controlled by the market and what should be supported by the tax payer. It is remarkable that the Commission tends to present the Agriculture sector as outside of the rest of society: *"Agriculture is having to face changes in what society expects of it*" said Commissioner Fischler in an Agriculture Council meeting[74]. The EU discourse on quality introduces the continuous link between "farmer" and "consumer" that still lacks the ideal image of the "farm to fork" promoted by the EU. The purpose is not to define a quality policy neither an attempt to define what is consumer understanding of quality. "Consumer demand for quality products" is a meaningless truth, with such a high degree of generality that it justifies in itself the conformation of the farmer to a new role in society.

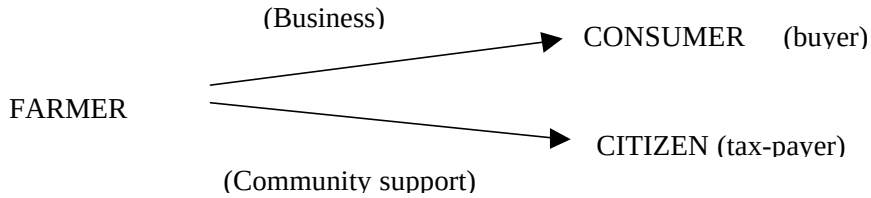
> *"We want farmers to resume their role as businessmen, producing for their customers rather than for the intervention stocks."*[75]

> *"At the same time, however, we also want to cut direct income payments to farmers who fail to comply with the requirement on the environment, food safety and animal welfare*[76]*"*

> *"This approach will mean farmers no longer have to present themselves as a charity case - instead, as commercially-minded businessmen working for a healthier environment and countryside, they can request their due from the European taxpayer with heads held high"*[77].

[74] Franz Fischler Member of the European Commission responsible for Agriculture, 'Rural Development and Fisheries Food quality Informal Agriculture', Council meeting in Sweden Östersund, 10 April 2001
[75] Speech Franz Fischler Member of the European Commission, responsible for Agriculture, Rural Development and Fisheries Adjusting the CAP to better meet its objectives The European Policy Centre Brussels, 20 September 2002
[76] ibid
[77] *ibid*

Consequently the links between Farmers and Consumers are of two types:



Unlike the consumer, the citizen is concerned with his right to choose according to other criteria than those of consumers as a buyer. This conception certainly dates back the principle of the farm to fork approach, although Commissioner Fischler acknowledges that both these faces of the consumer are not always easy to reconcile[78]. The discourse on Quality is "Consumer driven". Consumer demand for quality is not just related to the intrinsic quality of the products or to the process of production but more generally to "how it is produced". This can include the environment, animal welfare or ethical principles. In the debate on GMOs, for example, the latest regulation on GMO labelling recognises the right of the consumer to refuse food produced by a process using genetic modification even if they do not contain GMOs. As we saw in the debate on beef labelling, the institutionalised "EU consumer" has a moral power over the agro-producer. We observed during our survey in Brussels that the two agriculture representative organisations we interviewed (COPA-COGECA and CPE) had the least elaborated image of the consumer. Both interviews described a conflictual relationship between consumers and farmers, where farmers are victims of consumers manipulated by misleading messages.

One of the important challenges of the CAP reform following agenda 2000 was to enhance citizen and consumer comprehension and acceptability of the CAP[79]. Discourse on "quality" seems to have been developed for this aim, partially by a re-reading of the objectives of important regulations such as Beef labelling, PDO, PGI, or organic production which are now presented as consumer driven, while they were built in the aftermath of the achievement of the single market for economical reasons and under the pressure of some member states. The brochure published in 2001 by DG AGRI entitled "The common Agriculture Policy, 2000 review",[80] reassembles all these regulations under the title "Putting Consumers First". Is this afterthought really able to reach its aim of citizen acceptability? One may doubt it. Such manipulations sometimes lead to meaningless and frustrating sentences such as *"The new CAP will be geared towards consumers and taxpayers, while giving EU farmers the freedom to produce what the market wants(sic)*"; which may not enhance consumer trust[81].

[78] Speech by Franz Fischler , 'the new challenge of the Common Agricultural Policy Public Hearing of the European Parliament', Brussels, 21 June 2001

[79] Reform of the common agricultural policy (CAP), SCADPLUS, http://europa.eu.int/scadplus/leg/en/lvb/l60002.htm

[80] EU Publication: ISBN 92-894-1633-5

[81] "CAP reform - a long-term perspective for sustainable agriculture

http://europa.eu.int/comm/agriculture/capreform/index_en.htm

6.3 Safety and consumer confidence

Food safety is the domain where the effective institutional and regulatory changes have been determining all EU food policy. It is the domain where the institutionalisation of the consumer as citizen does not compete anymore with the consumer as buyer, at least in the discourse.

One important pillar of the new EU food policy is the Food authority that all the institutions finally agreed to devote entirely to Food Safety (the "S" of EFSA). The commitment of the EU to guarantee to consumers the provision of safe food is visible through the majority of the 80 measures proposed in the White Paper to ensure the best control of the food chain from the "farm to the fork". All these measures were planned or undertaken to protect consumers and to give them better guarantees that foods circulating in the European market has been properly controlled. Giving this assurance was one task of the new food policy agenda.

The other main task was to "restore" consumer confidence. Structural reform, enhancement of hygiene control, new divisions of responsibilities or new principles of liability would maybe reduce the proportion of poisonous food in the EU from an already infinitesimal amount but would not stop the spiral of mistrust that affected the beef market, and its possible spread into other markets. The treatment of consumer mistrust needed another "medicine" than that employed in guaranteeing the production of safe food to protect consumer health.

Transparency is the key principle addressed to consumer mistrust. An "agencification"[82] of food safety has been chosen to address the problem of mistrust[83], accompanied by a risk analysis policy advised by WHO/FAO[84] and based on a distinction between "risk assessment", "risk management" and "risk communication". As imagined by Commissioner Santer, the European "agency" should have been a European adapted version of the FDA. But the choice was finally made later by the Prodi Commission to strictly separate management from assessment missions and to give to the European "authority" the risk assessment function and the coordination of member country food agencies (Buonanno, 2003). The European Food Safety Authority was established in 2002 by the European Parliament and Council co-decision[85].

High expectations have been established in most of the observers, and the EFSA has been set up consensually and without major criticism on its principles. But within one year, strong criticisms affected the credibility of the institution even before its start. This was the fact that the particular remit of the EFSA is "safety". This emphasis on food safety in the new EU agenda to restore consumer trust has been criticised because it hampers the development of other health related policies such as nutrition (Millstone et al. 2000). The limits between risk assessment and risk management have been ill-defined (Vos, 1999).

[82] Agencification definition.
[83] This solution was proposed in the conclusion of the Pascal, Kemper James report (1999) ordered by the Prodi Commission. For theoretical examination of the issue of agencification / delegation see Majone, 1996:40
[84] Application of Risk Analysis to Food Standard Issues - Report of the Joint FAO/WHO Expert Consultation, 13-17 March 1995
[85] *"The primary responsibility"* of the EFSA is *"to provide independent scientific advice on all matters with a direct or indirect impact on food safety*". European Parliament and Council "Regulation laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety", adopted by the Council of Ministers on 21 January 2002

An officer in DG SANCO responsible for the relation with EFSA that we interviewed in 2003, one year after its creation, was still not sure how they would manage their relation with them in practical terms[86].

Consumer organisations such as BEUC criticised the way the EFSA management board was composed : *"they have packed the board with officials, mostly working under the direction of national governments" (B.K., BEUC* October 2002*)*. The result was not favourable to consumer organisations since only one in four of those proposed is a consumer organisation representative. The European Parliament adopted half the promised sum to the EFSA budget, delaying its start. The member states have not reached a consensus on finding a site for the EFSA, which still temporary located in Brussels. Finally, the specialised press states:

> *"It is, in fact, difficult to believe that the Parliament, after all the same body that cleared the legislation paving the way for Europe's new food safety body, finds it appropriate to cut the budget by half – in addition, the EFSA is still very much at the developmental stage. What happened to prioritising food safety in Europe?".*

The fact these criticisms do not have any particular impact in the political press does not show that the targeted "consumer" does not matter, but maybe conversely that the Authority has not acquired the trust that was supposed to spread to EU food policy and is still ignored.

Nevertheless for an interviewee from DG SANCO, the creation of the EFSA and the separation of risk assessment from management is a shift of responsibilities because the Commission will be better protected from political pressure:

> *"with the new system, we'll be able to answer, «listen you have requests, you may have political commitments, but in terms of safety it's nothing, the world won't collapse if you don't have it in 6 months», while there is opinion on which there is important and emergency stake for consumer protection."*[87]

The creation of the EFSA introduces another management of priority between food safety issues which may limit political pressures on DG SANCO.

These examples underlined that measures undertaken to restore "consumer trust" have been directly criticised, notably through its more symbolic expression. But only systematic investigations on the function of the EFSA in its relation with DG SANCO and the other EU institutions will be able to tell how extensive this shift of responsibilities was. Such investigation is impossible for the moment as the EFSA is not yet in full function.

[86] Interview DG SANCO, May 2003

[87] " *avec le nouveau système on va pouvoir leur répondre* (aux pressions politiques*), « »écoutez vous avez des demandes , vous avez peut-être des engagements politiques, mais au niveau sanitaire ça sert strictement à rien, le monde va pas s'écrouler si vous l'avez pas dans 6 mois », alors qu'il y a des avis sur lesquels il y a des vrais enjeux importants, urgents de protection du consommateur* » Interview DG Sanco, May 2003

6.4 Safety and division of responsibilities between private and public

Less visible, but probably also very influential, are the consequences of this food safety policy, that is grounded on the protection of "consumer interests", on the behaviour of market actors.

Since the 1990's, the food regulatory systems in developed countries are facing new challenges brought by new food-borne risks, the necessity to update control of established risks and political pressure for increasing controls "as a mechanism to support consumer confidence in the safety of the food supply". In international trade, public food safety measures are also suspected to be non-tariff barriers to trade under the SPS Agreement. For all these reasons the EU sought to favour private self control systems. Directive 93/43 required food companies to implement Hazard Analysis Critical Control Point (HACCP) and a recent commission package foresees to make the application of HACCP method compulsory for all non-primary food operators[88]. To make HACCP compulsory is also to put primary responsibility for the safety of food on food producers.

As demonstrated in numerous studies, strategic responses to stringent food safety regulation have been developed by market actors.: *"public food safety regulation is becoming more performance and process based, placing greater emphasis on the responsibility of food businesses to implement effective food safety controls. In turn, food businesses are using food safety regulation strategically in a bid to gain competitive advantage"*. (Henson and Caswell,1999)

The question of the limitation of public safety regulation by private actors is also raised and, if not to be concluded, deserves to be mentioned. As observed by Marsden, private strategies develop to limit public initiative in the name of consumer interests.

> *"A private-interest model of food regulation has developed alongside the public local authority enforcement system, such that retailers are now much more effective in controlling the quality and direction of foods from 'plough-to- plate.' The rise of private-interest regulation does not, however, avoid the need for the State to protect the consumer interest (as the BSE and the GM controversy shows). What it does do is to limit the state's ability to act in the consumer and public interest. Moreover, the progressive privatisation of research and development associated with food (expressed, for instance, in the proliferation of private patenting of genetic modifying techniques) means that governments can no longer 'command and control' the food system on behalf of consumers." (Marsden)*

In particular Flynn, Marsden and Smith observed a recent development of retailer-led food hygiene and hazard systems (such as HACCP) emerged *"as a condition of market entry for food suppliers and manufacturers: the retailers expect more and more from their suppliers in terms of the policing of food delivery as well as the type and specifications of the food produced*." This allows retailers to gain a market advantage with customers in terms of food safety and quality. Retailers promote their own

[88] measure is a part of the "hygiene package" composed of four proposals. The first four are proposed legislative acts: (I) general hygiene of foodstuffs, (II) hygiene of foodstuffs of animal origin, (III) official controls on products of animal origin intended for human consumption, and (IV) animal health rules for products of animal origin for human consumption. The aim is to harmonise and simplify the EU hygiene legislation that was previously scattered over 17 separate Directives. Press release SANCO, Hygiene package: "Commissioner David Byrne welcomes political agreement on animal health rules" DN: IP/02/1766 Date: 28/11/2002 http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/02/1766|0|RAPID&lg=EN&display

quality standards according to their own "hierarchy of quality definitions" (Flynn, Marsden, Smith, 2003).

6.5 EU food safety and external constraints

Let us turn to a more global regulatory level. The period we examine has also been marked by important international events which affected food policies – most significantly amongst them being the creation of the World Trade Organisation. Agriculture lost its status of exception and food must now be treated like other goods.

Up until 1995 GATT[89] allowed countries to implement a number of non-tariff agricultural measures (such as import quotas and export subsidies) which were not allowed for other products. Agriculture products had a status of exemption in international trade, inherited from the need for national food sufficiency after the Second World War. During the negotiation of the Uruguay Round (1986–94), it was accepted by most countries that this situation resulted in significant distortion of the international agricultural sector and blocked the potential development of international agricultural trade. The Uruguay Round Agreement on Agriculture (URAA), which aimed at agricultural trade liberalisation, was signed between WTO members officially *"to strike a balance between this liberalization and governments' desire to pursue legitimate agricultural policy goals*." WTO Members committed to reduce support and protection in the areas of market access, export subsidies, and domestic support. In counterpart, notably under EU pressure, the countries engaged to address what was described as "non-trade concerns", vaguely defined around food security, protection of the environment and developing countries' protection of interests. Each country had their own interpretation of what they considered to be non-trade concerns and this was an important breach in the liberalisation trend.

The members of WTO divided into two groups reflecting a durable internal conflict in the WTO: in one group the "Friends of multifunctionality", including the EU, who considered that farmers should be remunerated not only for their production of marketable commodities, but also their non-commodity outputs which have public good characteristics. In the other group, the opponents of multifunctionality, principally the United States and the Cairns Group, saw the multifunctionality argument as an attempt to resist trade liberalisation (Burrel,2002). Another more specific agreement (the SPS agreement[90]) was signed for the same purpose: to encourage liberalisation and competition by ruling on the use of sanitary and phytosanitary measures. Officially, the SPS Agreement sought to "reduce arbitrariness" of decisions by the application of two principles. Measures having effect to restrict trade should be based on the analysis and assessment of "objective" and "accurate" scientific data and governments should establish national sanitary and phytosanitary measures consistent with international standards, guidelines and recommendations[91]. For foodstuffs, the Codex Alimentarius[92] was recognised as a reference for international standards.

[89] General Agreement on Tariffs and Trade. GATT was superseded by the WTO in 1995.
[90] Agreement on the application of sanitary and phytosanitary measures
[91] The terms into quotation marks are taken from the official WTO website, www.wto.org
[92]The Codex Alimentarius Commission is a subsidiary body of Food and Agriculture Organization (FAO) and the World Health Organization (WHO) born in 1963 to develop food standards, guidelines and related texts such as codes of practice. (http://www.codexalimentarius.net/)

The SPS Agreement also made explicit the basis for challenges between countries. A country can challenge another country on the grounds that there is not sufficient scientific evidence supporting the trade restriction. The burden of proof is on the country taking the restriction measure rather than on the country introducing in the international market the "suspected" product. In case of disputes, a new WTO dispute settlement procedure can be invoked by the parties in conflict. In brief: after seeking scientific advice (for food matters, from the Codex Alimentarius commission), if the dispute settlement panel finds that a country is violating its obligations, it can oblige it either to conform or to pay fines. The SPS agreement elevates scientific evidence to the position of being the determining factor in disputes between members. In the EU, the scientific knowledge is also authoritative but not exclusive. The EU Scientific Committee for Food and other expert commissions must be consulted whenever health aspects are concerned in a foodstuffs related regulation, but the Commission "reserves the right to take other factors into consideration when reaching a final decision"(Hankin, 1997).

The dispute on hormone beef between member states, and later between the US and the EU, illustrates a growing international pressure on the EU regulatory framework towards more liberalisation in the foodstuffs sector and the difficulty for the EU of continuing to follow its "mediative" policy style (Grace Skogstad, 2001) and to impose "other legitimate concerns".

In 1985, the EC Council of Ministers voted to ban hormones in the Community. This decision was taken after negotiations between the UK and Ireland opposed to a total ban, and France, Germany, the Netherlands and Italy rejecting the use of any hormone. A few years later this decision was challenged at the WTO by US on the grounds that the ban was not exclusively based on scientific evidence. In 1997, the US and Canada held formal consultations in front of the WTO dispute settlement body. The two WTO panels in charge to assess the EC prohibition found that it was not in conformity with the SPS Agreement[93]. The EC appealed the conclusions of the panels in September 1997. But the Appellate Body, although cancelling two of the three conclusions of the panel, concluded that the EC was wrong and should bring its measures into conformity with its obligations. The EU was warned to implement the WTO Dispute Settlement Body's recommendation by May 1999. The EU failed to meet the deadline and had to pay concessions for the US and for Canada (in the form of 100% *ad valorem* duty on imports on a variety of EC products[94]). In response, the EC invested in several scientific studies to prove the hazard of certain types of hormones in beef. Some studies concluded positively, some not, but the results are irrelevant unless the Codex Commission validates them.

Despite this crisis between the EU and other countries in the WTO, the EU always, despite not applying its rules, supported the SPS agreement. As shown by the Hormone in Beef conflict, the SPS agreement was not in the line with the EC "mediative style" imposed by the plurality of the interests it represents. Despite this, DGs Agriculture, Internal Market and Industry, and Trade officials signed this Agreement. While consumer interests became an important issue in the EU, the Community delegations to the WTO have never been able to raise these concerns.

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94 "*Hormones in bovine meat , background and History of WTO dispute"*, DG SANCO, website

As underlined by N.Perdikis et al. (2001), TBT[95] and SPS[96] agreements are inadequate to address consumer concerns: *"there is no mechanism to allow politicians to ignore their WTO commitments when faced with the same type of political pressure from consumers that is expected from producers"*. This discrepancy between the Community voices in the EU and outside the EU has been the target of the groups which promote non-trade concerns: agriculture interest groups, consumer associations and environmental NGOs, and also among academics, sociologists, economists and researchers in food policy. For them, scientific-based policies are an effective booster for liberalisation of trade in agriculture, but is not sufficient to guarantee health and environmental protection. Codex Alimentarius was the first body to illustrate the absence of the independence of scientists. The connexion between industry interests and scientists and the opaqueness of the scientific experts' work in the Codex Alimentarius commissions has been demonstrated in several works and reports (Longfield,(1992); Avery et al.(1993); Millstone and van Zwanenberg, (2002)). The inability of the system to take into account minority judgements amongst scientists is also denounced. In brief, more and more in the EU oppose an exclusively scientific-based policy and support the argument that risk management can not be based only on scientific grounds but must be considered as *"a social issue and ought to be decided in an open and democratically accountable fashion."* (Millstone, Van Zwanenberg, 2002).

One can conclude that while in the EU "consumer interest" has in one decade become a major concern, where food could no longer be treated as other market goods then, following a diametrically opposite trend, the globalisation of trade exchange has led to the creation of the WTO which has ended the period in which agricultural products were treated as special goods required for filling human needs.

7 Conclusions

The TIF project considers trust in terms of social relations, which from a comparative viewpoint can assume different institutional forms. Its aim is not directed towards the research of factors that "enhance" consumer trust in food, but rather to understand variations in conditions for the production and maintenance of consumer trust in food.

One part of the TIF project is to study the variation in individual's beliefs and opinions through questionnaires addressed to consumers. The other part, in which the present report find its utility, aims to describe which factors could be said to cause different types of 'trust regimes'. Trust regime is conceptualised as the combination or configuration of institutional relationships of trust between the core agencies of a food system[97]. The institutional studies aim to first draw institutional mappings of the food systems in the 6 countries and at the EU level, and secondly to study the main shift of responsibilities in the 5 key food issued in relation to consumer. An important hypothesis is that "degrees of separation between regulatory agencies and the food industry, systems of accountability between different actors, and the distribution of social responsibility for risk between actors were likely to be key aspects of variation between trust regimes" (ibid).

[95] "Technical Barrier to Trade"
[96] "Sanitary and Phyto-Sanitary"
[97] Towards a comparative institutional analysis of trust in food Mark Harvey & Alan Warde CRIC

In this report we argued that the establishment of the SEM and the new harmonisation approach have led to a decisive step towards a Europeanization of the member states food systems by forcing member countries to find agreement on the limits that define food issues. Can this explain the institutional reforms that happened in all the countries studied in the TIF project ? Or are these reforms just political responses to consumer distrust after food crisis? We argued here that both have equally contributed to institutional changes.

One consequence of these two events is to have separate food safety issues from all other food issues, in a somewhat questionable manner. The WTO Sanitary and Phytosanitary (SPS) agreement has confirmed at the international level the power of member states to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life (i.e. refuse entry to its market of suspected products). The interpretation of health tends to be at all levels reduced to safety. Worrying statistics published regularly by the WHO on increasing obesity in Europe, and in particular amongst children, may lead the member countries to give a mandate to the EC to initiate a public health policy on nutrition. But the problem will then rise to the WTO level and the issue may become even more complex to solve.

Since "the consumer" has been disembodied from "consumption", it has appeared as the main motivation of key regulations related to food safety, nutrition and food quality. The consumer appears to be the ultimate goal of all food regulation. If we had studied the ability of the EU institutions and stakeholders to communicate about risk, we would certainly conclude that since 1997 the conditions have been met to enhance the level of consumer trust in food. Regulatory agencies are well separated from agro-food industries, the EU addressed the problem of accountability in its farm to fork approach and the distribution of responsibility is made relatively clear by structural division by DG and unit. However, in drawing the birth of the "EU consumer" (or the history of the institutionalisation of consumer), it appeared that institutional re-arrangements have occurred around a fairly fragmented conception of "consumer interest". The strategy for solution of food problems largely depends on the meaning given to 'consumer interest'.

To build a rational representation of this "unmanageable consumer"[98], the EU institutions and their Brussels discussants (all type of lobby groups) dispose of three different sources that portray the average "consumer", its wants, desires, opinions, refusals etc.: the consumer organisations themselves recently joined environmental NGOs, animal welfare groups, the Eurobarometers, and the information related to consumer behaviour produced by the retailers and food industry. All produce very contradictory information.

The complexity of the changing "consumer" led to the research of the maximisation of the satisfaction of consumer by reinsuring his individual "right to choose". Flexible and general solutions in favour of reactive market actors are preferred. The labelling solution was one of them.

To give the right to choose is also put the consumer in position to make a decision, and therefore to be responsible of his decision. In a context of growing complexity of food chain and growing asymmetry

[98] Gabriel, Yiannis, Tim Lang (1995).

of information between producers and consumers, the question raises if the consumer's "right to choose" is misleading.

Nutrition issues are treated by means of regulation of claims. Although nutrition problems are of important consequence to public health, they are still treated at the individual level, the responsibility lying on consumer choice. Nutrition being not considered as a collective safety problem (despite the number of deaths from poor diet through cancer, obesity and cardio- vascular disease) the principle of Subsidiarity and mutual recognition apply and the main initiative in the matter are left to the food industries and retailers.

The consequence of the emphasis on food safety is that resistances to EU regulation tend to be expressed in terms of "safety". Safety regulations have been strategically used by private actors to gain competitive advantage. In the WTO, the consumer's voice does not exist, and this leads member countries to use the SPS agreement. Instead of being seen as a means to express a state of social acceptation of risk, all attempts to speak in the name of consumer are rather seen as a protectionist strategy.

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