



## Authent-Net: Food Authenticity Research Network

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696371: Horizon 2020 Coordination & Support Action

### Deliverable: D1.2

Title: **Summary of food authenticity legal framework**

Beneficiaries: WP1 work package leader

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Date of preparation: 31-03-17

Status: version no.2

Dissemination level		
PU	Public	X
CO	Confidential, only for members of the consortium (including the Commission Services)	



"This project has received funding from the *European Union's Horizon 2020 research and innovation programme* under grant agreement No 696371".

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### 1 Description of Deliverable

The food sector has become one of the most heavily regulated sectors in the EU. Task 1.2. of Work Package 1 is to provide an outline of the food authenticity legal framework. It will enable to compile a list of international standards and regulations; link each item to respective countries and commodities to aid analyses and mapping food authenticity legal systems and emphasise national policy levels and regulations in member states (MSs). WP1 will also extract or generate keywords for each item for the entry into the searchable database [WP4].

This document summarises the legal framework on food authenticity in the EU and MSs, which is further elaborated in the National Status Reports (NSRs). The structure of the summary of the food authenticity legal framework departs from existing structures of mapping and analysing food law and regulation, such as the one developed by Van der Meulen (2013).

This structure aims to capture the essence and thus provide a tool for comparing EU food law to food law in MSs, for studying EU food law in an organised manner, and providing the legal context for analysing and applying specific elements of EU and MSs food law.

#### Characteristics of EU Food law

Core elements of food law as a functional area of law are: “(1) the objectives of food law to protect consumers’ interests; (2) the principles of risk analysis and precaution; (3) obligations on businesses regarding the products they place on the market, the processes they apply and their communication towards consumers; and (4) public powers of law enforcement and incident management” (Van der Meulen, 2013, p. 69).

The basis of European food law is formed by Regulation 178/2002 of the European Parliament and of the Council of 28 January 2002. This regulation outlines the general principles and prerequisites of food law, and it forms the legal basis of the European Food Safety Authority and the implementation of procedures to ensure food safety. EU food law applies to different tiers in the food supply chain and is thus directed at various businesses “from farm to fork”.

In addition, European food law is principle-based, as an alternative to traditional rule-based regulation that might exist in MSs.<sup>1</sup> The principles on which EU food law is based involve the

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<sup>1</sup> Principle-based regulation means moving away from reliance on detailed, prescriptive rules and relying more on high-level, broadly stated rules or Principles to set the standards by which regulated firms must conduct business (Black et al. 2007).

principle that food law protecting human health should be based on risk analysis, and with regard to food products the “abuse principle”<sup>2</sup>, and the “prohibition principle”<sup>3</sup> (Van der Meulen, 2013). European food law sets out an overarching and coherent framework for the development of food and feed legislation both at Union and national levels. To this end, it lays down general principles, requirements and procedures that underpin decision making in matters of food and feed safety, covering all stages of food and feed production and distribution.

Regulation 178/2002 forms the basis for food law in individual EU MSs. The general principles, requirements and procedures are worked out in numerous specific directives and regulations, dealing with different types of food safety issues and food stuffs, such as animal and plant health, microbiology, nutrition and geographical origin. Section 5 provides an overview of such directives and regulations.

It should be noted not all EU and MSs food law aims at food authenticity. Food safety is the main focus, but many (aspects of) regulations are relevant for the issue of food authenticity as well. This is mostly true for provisions on labelling and traceability. The labelling of food products is essential to inform consumers about what kind of products they are buying. EU harmonised rules on food labelling, presentation and advertising aim to protect consumers and facilitate trade inside and outside Europe.

Under EU law, “traceability” means the ability to track any food, feed, food-producing animal or substance that will be used for consumption, through all stages of production, processing and distribution. The General Food Law makes traceability compulsory for all food and feed businesses. It requires that all food and feed operators implement traceability processes. They must be able to identify where their products have come from and where they are going and to rapidly provide this information to the competent authorities (Arienzo et al., 2008).

In addition to the general requirements, sector-specific legislation applies to certain categories of food products, e.g. specific authenticity requirements for products such as beef, wine and olive oil.

Food legislation in the Single Market is harmonised across all MSs i.e. all MSs have to implement this legislation to permit free movement of food across the EU. Directives have to be implemented into national legislation with the wording as well as national controls, and MSs can take advantage of derogations so there may be some minor differences across the EU. EU Regulations only have to be implemented into the legal system of a MS, and just refer to the wording in the Regulation which is fixed. There has been a move therefore to make Regulations in the Single Market rather than Directives to improve harmonisation.

MSs are responsible for enforcing food law, and for monitoring and verifying that various businesses in the food chain comply with food law. Therefore, Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 offers the legal basis for formal controls to check compliance with feed and food law, but also with animal health and animal welfare rules (Van der Meulen, 2013).

### **The structure of EU and MSs food law**

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<sup>2</sup> Certain food products can be put on the market, but if an infringement of food law requirements occurs, this freedom is ‘abused’ and this can lead to a response by law enforcement agencies.

<sup>3</sup> Certain food products are prohibited until they are authorised to enter the EU market.

The legal framework on food authenticity constitutes of the EU directives and regulations and MS laws and regulations in the field of food law that contain provisions on or that are relevant for the issue of food authenticity.

These laws and regulations can be structured along various dimensions:

1. An EU dimension and a national dimension: EU food (authenticity) law and (the implementation of EU) law in MSs. Within certain MSs, a regional level is relevant, as autonomous regions might have their own food regulations;
2. The interests that are involved: consumer protection and human health, animal welfare, environmental concerns, market integrity, interests either from the perspective of sustainable or ethical production;
3. The form of national legislation: does it concern civil, administrative or criminal law.
4. The object of legislation: legislation on the *product*, legislation on the *process*, and legislation on the *presentation* of food products;
  - o Relevant themes for this purpose are: food labelling, biological safety, chemical safety, animal by-products, food improvement agents, novel food, animal feed;
5. The focus of legislation: on authorities, businesses, and consumers;
6. The focus on specific (actors within) food supply chains, such as product chains (e.g. meat, cheese, oil) or tiers within the chain (e.g. farmers, processors, distributors, wholesale, supermarkets);
7. Legislation concerning the enforcement and monitoring of food authenticity regulations (RASf, recalls, control).

#### **MSs food authenticity legal framework**

The dimensions of food law listed above can be identified in the legal frameworks of MSs provided in the NSRs. These legal frameworks can be structured and qualified along these dimensions.

Most MSs have a general food law at the national level. In several MSs (e.g. Italy and the Netherlands), supplying unsafe food products is also a criminal offence, criminalized in de Penal Code. Besides these general provisions, MSs have specific regulations on the various themes covered by the EU directives and regulations.

Due to the implementation of EU General Food Law and the EU directives and regulations, food law and food authenticity regulation in the MSs (participating in Authent-Net) share many similarities in scope, structure and content. Although MSs have different legal systems (which will result in different penalties etc for noncompliance), the main provisions of the EU legislation as regards authenticity requirements remain the same. As mentioned, Directives have to be implemented into national legislation, and MSs can take advantage of derogations so there may be some minor differences across the EU. MSs may have existing national legislation which has a bearing on food authenticity, but this cannot conflict with any EU Single Market legislation.

Differences in the structure and foci of food regulation between MSs can be the result of differing legal traditions (e.g. Common law in the United Kingdom and Ireland and Civil law in continental European MSs) as well as differences in national food industries. These differences can account for using different legal instruments (e.g. administrative versus criminal law) and specific product regulations (such as meat, dairy, cereals, wine, canned food etc.). Not all NSRs provided information and relevant provision in the Criminal Code (penalizing food fraud) and the enforcement of food law. In countries with sub-national regions that have a certain degree of law-making autonomy, regional food law regulations can be found, such as in the United Kingdom.

Gaps and asymmetries in the legal frameworks of MSs can create criminogenic opportunities for food fraud. Such gaps and asymmetries can partly be deducted from the NSR legal frameworks. However, differences in actual implementation and enforcement cannot be deducted from the current legal frameworks in the NSRs.

## 2 Achievement of Deliverable

For fulfilling deliverable D1.2. A summary of food authenticity legal framework [M9] the following activities have been undertaken.

First, a literature review of existing structures to map food law in the European Union was conducted. Scholarly publications as well as EU and MS white papers were studied.

Second, the integrated structure presented above was designed on the basis of this literature review.

Third, the structure was used and tested for developing the legal framework for the NSR of the Netherlands.

Fourth, the structure of the summary of food authenticity legal framework was presented as Milestone 3. In June 2016, this general integrated structure on food law was released for use and application in the country status reports. It provided the template of the legal frameworks in the country status reports and instructed to provide links to relevant legal frameworks in respective MSs.

Fifth, after the release of the draft NSR of the selected MSs (Belgium, France, Iceland, Ireland, Italy, Spain, The Netherlands and the United Kingdom) an assessment of the legal framework in these draft NSRs was conducted. Findings and feedback were reported to WP1 work package leader. The main finding was that the information in the sections on the legal framework in most NSRs was relevant and fairly complete. However, as laws are written in national languages it is difficult to judge whether the information provided on the legal frameworks in the NSRs is correct and complete. Nevertheless, considerable differences in the section on the legal frameworks were observed.

Based on the draft NSRs, the following suggestions for the sections on the legal framework for all NSRs were given to the WP1 work package leader:

- Organize the links into legislation and regulation in sections, for instance on food related issues (for instance the various food stuffs, labelling, hygiene, etc.).
- Provide short explanations or translations of the titles or pieces of legislation or regulation with links.
- Take a broad perspective: do not only include regulation that is only about authenticity, but also other types of legislation that contains provisions that are relevant for safeguarding or enforcing food authenticity, such as general food safety laws and when relevant the Criminal Code of Penal Code.
- Include specific national regulations related to food in general because it is difficult to find laws only related to food authenticity.
- Do not include EU-legislation in the NSR (as these are applicable to all MSs), only national implementations of such EU-legislation.

Finally, in hindsight, in requesting regulatory information from MSs, the NSRs do not distinguish between national regulations which are simply implementing EU legislation, and national regulations

which cover labelling and standards not found in EU legislation. The former should all be the same as the EU legislation prescribes.

Sixth, the draft deliverable D1.2 was produced before December 31 2016. At the Authent-Net workshop meeting of WP2 at Schiphol Airport on December 21 2016 it was concluded that the deadline for D1.2 should be extended to the end of March 2017. This would enable including the final version of all initial 8 NSRs as well as the NSRs of the MSs that have joined Authent-Net in 2016: Norway, Poland, Czech Republic, Bulgaria and Romania. This would also enable to assess potential differences in the level of implementation of EU food (authenticity) law between old and new MSs.

By March, the legal framework in some of the draft NSRs had been reworked according to the feedback provided (e.g. while the draft NSR of Belgium did not contain information on food authenticity legislation yet, only a link to a website on certification labels, it now contains an elaborate legal framework). Further, the NSRs of Czech Republic, Bulgaria and Romania were available and were included in the analyses. Regrettably, the NSRs of Norway and Poland were not available. Although some of the drafts were updated and completed after giving feedback, there maintain differences in the section on the legal framework of the various NSRs:

- The section on the legal framework in the NSR of **Belgium** provides an elaborate list of food laws and regulations, categorized to types of food products in food authenticity issues and complimented with a short elaboration in English. The Belgian general food law: <http://www.warenwetgeving.be/>
- The section on the legal framework in the NSR of **Bulgaria** only mentions that there is no regulation on food authenticity. This raises the question whether the EU General Food Law has not been implemented in domestic law in Bulgaria. The country report on the website of EU Food Law ([www.eurofoodlaw.com](http://www.eurofoodlaw.com)) does for instance mention that the Bulgarian government has adopted a regulation that sets the requirements for the labelling, supply and advertising of food products.
- The section on the legal framework in the NSR of **Czech Republic** contains one link to a law on food and tobacco products. The text of this act is in Czech, and there is no explanation in English: [http://eagri.cz/public/web/mze/legislativa/pravni-predpisy-mze/tematicky-prehled/Legislativa-MZe\\_uplna-zneni\\_zakon-1997-110-viceoblasti.html](http://eagri.cz/public/web/mze/legislativa/pravni-predpisy-mze/tematicky-prehled/Legislativa-MZe_uplna-zneni_zakon-1997-110-viceoblasti.html)
- • The section on the legal framework of **Finland** contains two links to Finnish food legislation, without further elaboration. The Finnish Food Act in English: <http://www.finlex.fi/fi/laki/kaannokset/2006/en20060023.pdf>
- The section on the legal framework of **France** is fairly inclusive. It included links to the underlying laws and regulations. However, the list was not organized in topical sections on types of regulation or issues. The database for French legislation: <https://www.legifrance.gouv.fr/>
- The section on the legal framework of **Iceland** is well structured, with links with a short explanation about content. E.g. the Icelandic regulation of the labelling of food: <http://www.reglugerd.is/reglugerdir/allar/nr/1294-2014>
- The section on the legal framework of **Ireland** is very limited. Only three links were provided, among which two to EU-regulation and one to the Irish Food Authority. The latter refers to 'food legislation in Ireland' but the website itself appears not to contain this legislation itself: [https://www.fsai.ie/about\\_us/service\\_contract\\_agencies.html](https://www.fsai.ie/about_us/service_contract_agencies.html)

- The section on the legal framework of **Italy** is very good and very inclusive, as it is structured in topical sections and it provides links with a short explanation about content. The Italian directive on general safety of products :  
<http://www.camera.it/parlam/leggi/deleghe/04172dl.htm>
- The section on the legal framework of **Netherlands** was designed as a template. It provides links to Dutch legislation of food safety in general and food authenticity in particular. The links are categorized in types of food products in food authenticity issues and complimented with a short elaboration in English. The Italian NSR learned that the relevant provisions of the Dutch Criminal Code should be included as well, which was done in the final version. The Dutch general food law: <http://wetten.overheid.nl/BWBR0001969/2016-08-01>
- The section on the legal framework in the NSR of **Romania** contains a link to the website of the national food safety agency which lists Romanian food laws and regulations. The NSR provides a short elaboration of the contents of these laws in English. Further, links to regulations on quality and geographical indications of Romanian traditional products as well as organic farming are provided, e.g.: <http://www.ansvsa.ro/legislatie/igiena-si-sanatate-publica/>
- The I section on the legal framework of **Spain** is very sufficient. It was not organized by food related themes, but by responsible ministries and other governmental bodies. It included links and explanations. The link to Spanish national regulations in food safety and authenticity: <http://www.magrama.gob.es/es/alimentacion/legislacion/recopilaciones-legislativas-monograficas/default.aspx>
- The section on the legal framework of the **United Kingdom** provided links to food authenticity regulations, with short explanation about content. However, reference to more general food safety regulation that is also relevant for authenticity was missing. Also, reference to food legislations of the various UK countries was missing (England, Scotland, Wales and Northern-Ireland). The feedback given suggested including the following oversight:  
<https://www.food.gov.uk/sites/default/files/multimedia/pdfs/enforcement/foodlawguide.pdf>

### 3 Key words for searchable database

Food law	Certificates	Placing on the market
Food safety regulation	Labelling	Specified risk material
Food authenticity regulation	Tracking and tracing/ traceability	Hygiene
Criminal law/ Penal code	Identification and registration	Specific product regulation
Law enforcement	Animal medication	Regional/geographical origin



## 4 References

Arienzo, Alessandro; Christian Coff; David Barling (2008) The European Union and the Regulation of Food Traceability: From Risk Management to Informed Choice? In: Ethical Traceability and Communicating Food, pp 23-42.

Black, Julia; Hopper, M.; Band, C.(2007) Making success of principles-based regulation, Law and Finance Market Review, 191-206.

Meulen, B.M.J. van der (2013) The Structure of European Food Law, Laws 2 (2). - p. 69 - 98.

## 5 EU regulations and directives

National regulation listed in the NSRs should be based on and implement relevant EU legislation on food and food authenticity. Relevant EU regulation can be discerned in regulation containing general principles relevant for food authenticity and containing specific provisions on food authenticity, and regulations applicable to all or to most food products. As mentioned in section 1, general principles are laid down in the general food law. Other regulations contain specific principles relating to issues such as traceability, controls, geographic origin and consumer information. Further, the EU parliament and council have issued vertical marketing standards on certain groups of food products, such as the so-called "Breakfast Directives" aligning the existing EC implementing powers for seven product specific vertical Directives (coffee and chicory extract, cocoa and chocolate products, sugars, fruit jams, dehydrated milk, honey and fruit juice/nectars). Other food products regulated by specific regulations are e.g. Basmati rice, fish, meat, organic food, olive oil, wine, spirit drinks etc. These regulations are relevant to food fraud/authenticity as they provide specifications that the products have to adhere to and in many cases provide the reference methods that have to be used to confirm them. Without the ambition to be exhaustive, these regulations are listed below:

EU Legislation	Subject
<u>General principles</u>	
Regulation (EC) No 178/2002	General principles and requirements of food law
Regulation (EU) No 931/2011	Traceability requirements
Regulation (EC) No 882/2004	Official controls on compliance with feed and food law, animal health and animal welfare rules



Regulation (EC) No 854/2004	Specific rules for the organisation of official controls on products of animal origin intended for human consumption
Regulation (EC) No 854/2004	Food products of animal origin – official controls
Regulation (EU) No 1151/2012	Quality schemes for agricultural products and foodstuffs
Regulation (EU) No 664/2014	The establishment of the Union symbols for protected designations of origin (PDO), protected geographical indications (PGI) and traditional specialities guaranteed (TSG)
Commission Implementing Regulation (EU) No 668/2014	Implementing provisions for Regulation (EC) No 1151/2012
Regulation (EU) No 1169/2011	The provision of food information to consumers
<u>Agricultural products</u>	
Regulation (EC) No 1234/2007	Common organisation of agricultural markets and on specific provisions for certain agricultural products
<u>Organic products</u>	
Regulation (EC) No 834/2007, 889/2008	Basic legislation, implementation provisions
Regulation (EC) No 1235/2008	Rules of import
<u>Cattle and beef products</u>	
Regulation (EC) No 1760/2000	labelling of beef and beef products
<u>Fish, fish products and aquaculture</u>	

Regulation (EC) No 104/2000	Informing consumers about fishery and aquaculture products
Regulation (EU) No 1379/2013	Mandatory and voluntary information to be provided for prepacked and non-prepacked fishery and aquaculture products
Regulation (EEC) No 1536/92	Common marketing standards for preserved tuna and bonito
Regulation (EC) No 1181/2003	Common marketing standards for preserved sardines

#### Eggs

Directive 2002/4/EC, Directive 2006/83/EC	The registration of establishments keeping laying hens
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#### Olive oil

Regulation (EC) 2568/1991	Chemical and organoleptic characteristics, methods for their analysis
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#### Coffee

Directive 1999/4/EC	Coffee extracts and chicory extracts
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#### Cocoa and chocolate

Directive 2000/36/EC	Provisions for cocoa and chocolate products intended for human consumption
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#### Fruit jams

Directive 2001/113/EC, Regulation (EC) No 1182/2007	Fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption
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Preserved milk

Directive 2001/114/EC, Directive 2007/61/EC      Partly or wholly dehydrated preserved milk for human consumption

Sugars

Directive 2001/111/EC      Sugars intended for human consumption

Honey

Directive 2001/110/EC      Honey

Fruit juices & nectars

Directive 2001/112/EC      Fruit Juices and Certain Similar Products

Natural Mineral and Spring Waters

Directive 2009/54/EC      Exploitation and marketing of natural mineral waters

Directive 2003/40/EC      Concentration limits and labelling requirements for the constituents of natural mineral waters

Wine and spirit drinks

Regulation (EU) No 251/2014      definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products

Regulation (EC) 110/2008      definition, description, presentation, labelling and the protection of geographical indications of spirit drinks

Regulation (EC) 2870/2000      reference methods for the analysis of spirit drinks

Regulation (EC) 2091/2002

amending Regulation (EC) 2870/2000

Rice

Regulation (EC) No 972/2006

control system for determining origin of Basmati Rice

Spices

Commission Decision 2004/92/EC

Chilli, chilli products, curcuma and palm oil

Commission Decision 2002/75/EC

Star anise

Quick frozen foods

Commission Directive 92/2/EEC

Sampling procedure and the Community method of analysis for the official control of the temperatures of quick-frozen foods intended for human consumption

Directive 89/108/EEC, Regulation (EC) 37/2005

Quick-Frozen Foodstuffs

Nutrition and health/special food and drink

Regulation (EC) No 258/97

Novel foods and novel food ingredients

Directive 89/398/EC

Foodstuffs intended for particular nutritional uses

Directive 2001/15/EEC

Specific nutritional purposes

Directive 1999/21/EEC

Dietary foods for special medical purposes

Directive 2006/141/EC

Infant formulae

Directive 96/8/EC

Energy-restricted diets for weight reduction

Regulation (EC) No 1924/2006

Nutrition and health claims

Regulation (EC) No 1925/2006

Addition of vitamins and minerals

Directive 2001/83/EC

Medicinal products for human use

Regulation (EC) No 953/2009

Substances that may be added for specific nutritional purposes in foods for particular nutritional uses

Directive 2006/125/EC (codification of Directive 96/5/EC)

Processed cereal-based foods and baby foods for infants and young children

Regulation (EC) No 609/2013

Food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control

Regulation (EC) No 2015/2283

Novel foods