

(today Directive 98/34/EC with subsequent amendments). According to this so-called Technical Standards Directive, Member States were required to notify the Commission of any technical regulation before they were put into force. If a Member State failed to duly notify the measure, it would not be enforceable. The scheme provided the Commission (and the other Member States) with the possibility of blocking any such new measures. Based on my own previous experience as adviser on EU compliance in the Danish central administration I dare say that the Technical Standards Directive has had a very real impact when it comes to the creation of the internal market.

Irrespective of the New Approach and the Technical Standards Directive, developments towards the creation of a common market continued to be slow and therefore the Delors-Commission decided to relaunch the common market. In 1985 the Commission published a whitepaper under the title 'Completing the Internal Market'. This whitepaper contained almost 300 proposals for legislative initiatives aimed at removing barriers between the Member States, and it led to the adoption of the Single European Act reforming the decision making mechanisms of the EEC and setting a deadline of 31 December 1992 for the completion of a single market. Amongst the most important measures of the Single European Act was the introduction of Article 100a EC into the Treaty (today Article 114 of the TFEU). This provision streamlined the procedure, in particular by abandoning the unanimity requirement in the original Article 100 EC. Essentially it added a new and more efficient weapon to the European Union's armoury to be used in the fight for harmonisation.

If a book carries the title 'The Law and Policy of Harmonisation in Europe's Internal Market' I expect it to cover the law and policy of harmonisation in Europe's internal market. The book under review here, however, does not do this. Rather, as expressly stated in the introduction, it merely purports to provide 'an extensive exploration of the harmonisation paradigm encapsulated by Article 114 TFEU'. This task it pursues over slightly less than 200 pages. The book contains a very rough table of contents (giving only the titles of the five main sections without providing information about the subsections). In contrast, it contains a rather long index. Nevertheless, following several checks of the index it left this reviewer with the impression that the index was un-

likely to have been produced by the author of the book or someone else knowledgeable about the book's topic.

Those with a keen, in-depth interest in Article 114 TFEU and a predilection for long doctoral footnotes should read this book from cover to cover. For those who primarily need a succinct reference work with a well-functioning index and a detailed table of contents this work will probably give rise to some disappointment.

La sicurezza alimentare negli ordinamenti giuridici ultrastatali

by Dario Bevilacqua

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Global production and supply of food have been part of people's everyday life for a long time. Back in the 17th century colonies already provided European countries with commodities that could not be grown in Europe. The scale of the phenomenon has, however, broadened enormously in the last few decades. On the one hand, with the increased wealth and mobility of people, and the emergence of new ideas about cuisine and nutrition, the demand for quantity and variety of food has grown. On the other hand, improvements in the technology of transporting perishable goods, of the fall in price of transportation of these products and reductions in barriers to trade have greatly facilitated the movements of food products.

As a consequence, the way food demands are met has become complex, involving more countries than ever. Tea cultivated in Africa may be processed in India, packaged in the United Kingdom and sold in supermarkets in the United States. Since food production techniques and cultures, as well as sanitary standards differ from one country to another, the increased number of market exchanges carries greater risks for food safety and foodborne diseases.

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The effectiveness of the way this complexity is managed thus becomes of paramount importance. With the aim of highlighting characteristics of, and gaps in the sector, the book offers a complete and accurate overview of food safety governance, procedures and principles. The analysis focuses on the European Union and the global system, but national systems represent a constant term of reference throughout the study.

The three Chapters into which the book is divided respond respectively to the following questions: Who decides? How are decisions taken? What are the grounds for decision?

The first Chapter deals with the actors involved in the regulation of the food sector beyond the state. The author analyses formal (World Health Organisation, Food and Agriculture Organisation, Codex Alimentarius Commission, World Trade Organisation) and informal bodies (Global Forum of Food Safety Regulators – GFFSR, International Food Safety Authorities Network – INFOSAN etc.) contributing to the food safety governance at global level, as well as the EU food safety system. The two systems (EU and global) are critically assessed and compared. Although some organisational models (such as the use of networks) are common to both systems, the context in which they are used gives different outcomes in terms of efficiency and fairness. While the global system remains sectorial and characterised by a plurality of centres linked one to another, roles, functions and goals of the different actors are precisely set in the EU system, where the governance of the food sector is included in a comprehensive institutional framework.

In the second Chapter the author considers the way decisions are taken at EU and global level and the effect that these decisions have on sectors other than food safety, as well as on national systems and, ultimately, on individuals.

The study first analyses the guiding criteria of the decision-making process, such as the proportionality principle and the principle of reasonableness. The use of the precautionary principle is particularly scrutinized. While at the EU level risk managers are bound to apply this principle in circumstances of scientific uncertainty, at global level it is neither mentioned in any legal text, nor admitted as a general principle by dispute settlement bodies. The analysis also highlights the increasing importance of science, both at the EU and global level, but particularly in

the latter case, where the attempt to limit discretionary power of national administrations leaves little room for non-science based arguments justifying the decisions taken.

As far as the effect of global rules is concerned, emphasis is put on the *de-facto* binding effect of formally non-binding norms. Two main consequences of this phenomenon are highlighted in the study: individuals are empowered by giving them new rights against national administrations and national administrations' decision making is re-shaped, reducing their discretionary power.

The almost-binding effect of global obligations and their broad application raise the question addressed in the third Chapter: the legitimacy of transnational powers. It emerges from the analysis that while the existence of a global regulatory dimension subjects national administrations to additional controls, global regulators' (including dispute settlement bodies) legitimacy and accountability is still very limited. Legitimacy does not stem from individuals' entrustment, but is indirectly provided by states' representation in global bodies. Global bodies are thus only accountable to their member states and not to individuals. Whilst the latter are empowered by giving them new rights against national administrations, their capacity to influence political decisions diminishes since these are taken at a more distant level. Also, as a consequence of national administrations' loss of power, some social interests (e.g. health, environment, consumer's awareness etc.) are less protected.

Procedural guarantees, such as transparency, participation or the duty to give reasons, exist at global level, but are equally limited in scope. The analysis shows that some loopholes in terms of accountability also exist at the EU level. The deficit is, however, compensated by using as consensus-gathering methods procedural instruments required by the due process of law.

Through the analysis carried out in the three Chapters, the study demonstrates that beyond national legal boundaries decisions are guided by the same principles. Also, regional and global bodies use similar organizational schemes and face analogous legitimacy and accountability problems. The EU system may be seen as an advanced evolution of the global one. For this reason, throughout the analysis the first system is used as a benchmark against which the second is evaluated.

At global level, where a centre is lacking, one system tends to prevail over others. Networks set up by different actors to respond to contingent needs (e.g. addressing food outbreaks or exchanging information) are unable to ensure a proper balancing of different interests carried by the regulators operating in the field. Decisions concerning food safety are thus not supported by a defined strategy, which would require the political will that is missing at global level, but are taken on a case-by-case basis. Moreover, in order to reduce discretionary powers science becomes the main foundation for decision-making.

The author argues that global disorder and democratic deficit may be mitigated through the use of principles and mechanisms of administrative law to promote a fairer balancing of the interests represented at the global level. The thesis finds its roots in the Global Administrative Law project, which aims at exploring ways in which the principles of administrative law and organisational models could make up for the lack of a centralised institutional framework and guarantee a minimum protection of different (and sometimes diverging) individual interests. Pursuing this line of thought, the study claims that the application of the due process of law (impartiality, transparency, participation of private parties in the decision-making etc.) should be strengthened at global level in order to foster global bodies' legitimacy and accountability. Moreover, the precautionary principle should play a greater role, offering guiding criteria to avoid arbitrary decisions and excessive reliance on scientific data.

According to the author's view, the development of the EU system demonstrates that the use of those principles has increased decision makers' legitimacy, promoting the adoption of impartial decisions through the smooth integration of different interests. Whilst the weaknesses of the EU system are highlighted, some questions remain open and further analysis could be developed from the conclusions

reached in the book. For instance, a further investigation of critical issues raised by the EU experience could offer useful hints on possible mistakes to be avoided in the implementation at global level of the principles considered in the study. The use of the precautionary principle by the EU policy-makers, for example, is sometimes criticised. As pointed out in the book, the requirements needed to apply it are not clearly stated, leaving risk managers with a wide margin for manoeuvre and opening the way to questions concerning the concrete application of the principle. Building on the suggestions put forward in the book, future research should also address a key issue regarding the possible application of the precautionary principle at global level: could this principle work in a system without head? The assumption of responsibilities by the decision-maker that the use of the principle implies does not seem to fit easily in a politically fragmented system.

Even though the lack of a centre or a "constitutional" framework at global level is not questioned in the analysis and the study does not aim at discussing the opportunity of setting up a unitary global system of food safety, it builds the foundations for a broader debate on the feasibility and desirability of such a global system, as well as on its characteristics. As correctly pointed out in the book, food safety is both a global concern (it interests each citizen of the world) and one that strongly involves local cultures and traditions, which may be wiped out by a more intrusive global regulation. From a different perspective, one may also wonder if the current configuration of the global system, based on links between different actors, is not the preferred choice for certain actors. Networks of powers might put developing countries, for example, in a better position. Unlike hierarchical or more structured systems – where decisions can only be influenced by being at the top of the system – simply being part of the network may secure more influential powers.