

# Asociación Iberoamericana para el Derecho Alimentario

---

From the SelectedWorks of Luis González Vaqué

---

June 8, 2016

## EU: Has the Time Come to Simplify Food Law?

Luis González Vaqué



This work is licensed under a [Creative Commons CC\\_BY-NC-ND International License](https://creativecommons.org/licenses/by-nc-nd/4.0/).



SELECTEDWORKS™

Available at: [http://works.bepress.com/luis\\_gonzalez\\_vaque/208/](http://works.bepress.com/luis_gonzalez_vaque/208/)

## EU: has the time come to simplify food law?

Luis González Vaqué

### 1.- Introduction

Current EU food legislation is extremely complex, and unsustainably so. There is no doubt that this is due to the complexity of the food sector itself. Furthermore, in the context of a food chain consisting of several stages between production and consumption, various factors have helped foster even greater levels of complexity, such as the national exceptions included in the Regulations, the neo-protectionist tendencies of some Member States (typical of a period of generalised economic crisis), etc.

A world which is increasingly globalized, competitive and dominated by new technologies needs an effective and efficient regulatory environment<sup>1</sup>. In 2010 the European Commission responded to this need by launching a process of evaluation and analysis (*fitness check*), to identify which aspects of EU legislation<sup>2</sup> could be improved. This process is now managed within the framework of the *Regulatory Fitness and Performance programme* (REFIT)<sup>3</sup>, which I discuss further on. The food supply chain satisfies one of humankind's most basic needs and is inseparable from social and cultural contexts. It is also of strategic *economic* importance

at both the national and European level<sup>4</sup>. This makes it vulnerable on the one hand and also notably heterogeneous, bringing together a whole range of sectors, including agricultural producers, the agri-food industry, food distribution and the hotel and restaurant trades. In recent years the relationship between these different links in the chain has grown closer, as they have moved away from just ploughing their own respective furrows and towards identifying common interests and objectives, especially when it comes to meeting growing consumer demand for efficiency, competitiveness and sustainability<sup>5</sup>. Meeting such demand is quite a challenge, especially as consumers are also increasingly concerned about nutritional, health and environmental issues.

They are also consuming in new ways (the internet, local and sustainable products...), and expect more detailed, accurate and up-to-date product information. The complex nature of current legislation<sup>6</sup> is one of the chief factors weakening the competitiveness of the agri-food sector, and with it the food supply chain as a whole. So it is worth asking whether the REFIT programme will succeed in reducing such complexity, because judging by the lack of results achieved by previous initiatives, I am not sure that it will.

### 2.-The REFIT programme

There are many expectations surrounding the REFIT programme<sup>7</sup>, and the European Commission

(<sup>1</sup>) See C. Vidreras Pérez, *La legislación alimentaria en la UE: ¿rompecabezas o jeroglífico sin 'Piedra de Rosetta?*, BoDiAlCo, n° 15, 2015, 13-14.

(<sup>2</sup>) Commission Staff Working Document "A Fitness check of the Food chain – state of play and next steps" – SWD (2013) f 516.

(<sup>3</sup>) COM (2014) 368 final of 18.6.2014 – Communication from the Commission: "Regulatory Fitness and Performance (REFIT): State of Play and Outlook".

(<sup>4</sup>) As argued, for example, by my friend and colleague F. Albisinni, in his excellent chapter *El Derecho alimentario como acicate de innovación del Derecho Europeo*, in L. Bourges, *Sociología y Derecho alimentarios*, Aranzadi, 2013, 123-126. See also M. Prieto Goberna, "Mejora de la legislación europea y del Derecho alimentario: análisis y reflexiones" in *Lecciones de Derecho alimentario 2015-2016*, Thomson Reuters Aranzadi, 2015, 63-64.

(<sup>5</sup>) See A. Mayoral, *REFIT, el programa de Adecuación y Eficacia de la Reglamentación de la Comisión Europea*, BoDiAlCo, No. 15, 2015, 23-24.

(<sup>6</sup>) See the FIAB's "Informe Económico 2014" (cited in M. Prieto Goberna, *op. cit.*, p. 64). In this Report the Federación Española de Industrias de Alimentación y Bebidas notes with regard to the regulatory environment that "Spain has some 100,000 laws and regulations, creating a level of complexity which can only undermine competitiveness".

(<sup>7</sup>) On this programme see for example D. Jancic, *The Juncker Commission's Better Regulation Agenda and its Impact on National Parliaments*, in EU Working Paper MWP 2015/18, Special Issue "Parliaments, Public Opinion and Parliamentary Elections in Europe",

has acknowledged this by announcing<sup>8</sup> the creation of an Independent Regulatory Scrutiny Board as part of its Secretariat-General, to be chaired at Director General level. Further to this development, it is also worth highlighting that on 19 May 2015 the Commission announced that it was setting up a REFIT Platform to advise on simplifying EU laws and making them more effective and efficient<sup>9</sup>.

As previously noted, REFIT is the European Commission's Regulatory Fitness and Performance programme: "action is taken to make EU law simpler and to reduce regulatory costs, thus contributing to a clear, stable and predictable regulatory framework supporting growth and jobs"<sup>10</sup>. To do this successfully, REFIT requires a joint effort between the European Parliament, the European Council, the European Commission, Member States and stakeholders. Every level of government should be involved to ensure that the benefits are realised at least cost for citizens and business.

Turning to the food supply chain itself, it was notably one of the areas chosen by the European Commission for the purpose of assessing whether European legislation is fit for purpose<sup>11</sup>, due to both

its social and economic importance and the complexity and volume of applicable regulations.

Taking a historical perspective, we find that the White Paper on food safety<sup>12</sup> published at the end of the 1990s had already identified the need for an integral, harmonised and consistent approach to developing and implementing EU food legislation in response to the various crises of that decade<sup>13</sup>.

One law adopted in response to these crises was Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 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.<sup>14</sup> This Regulation laid down the founding principles of Community food law. Its objectives included:

- ensuring a high level of protection for both human health and consumer interests
- creating an environment conducive to developing food law, with a decision-making process based on risk management and strong scientific arguments;
- establishing crisis management procedures and actions for emergency situations.

---

ed. by C. Fasone et al., 2015, 45-54 (document last accessed on 7.12.2015 and available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2683358](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2683358)); E. Van Den Abeele, *The EU's REFIT Strategy: A New Bureaucracy in the Service of Competitiveness?*, ETUI Working Paper 2014.05 (last accessed on 7.12.2015 and available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2512683](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2512683)).

(<sup>8</sup>) See A. Mayoral, *op. cit.*, p. 24.

(<sup>9</sup>) See the following link, last accessed on 7.12.2015: [http://ec.europa.eu/smart-regulation/better-regulation/documents/c\\_2015\\_3261\\_en.pdf](http://ec.europa.eu/smart-regulation/better-regulation/documents/c_2015_3261_en.pdf) [the Commission also publishes regularly provisional dates of adoption of Commission initiatives. (See [http://ec.europa.eu/atwork/pdf/planned\\_commission\\_initiatives\\_2015.pdf](http://ec.europa.eu/atwork/pdf/planned_commission_initiatives_2015.pdf)).

(<sup>10</sup>) See the following link, last accessed on 7.12.2015: [http://ec.europa.eu/smart-regulation/refit/index\\_en.htm](http://ec.europa.eu/smart-regulation/refit/index_en.htm).

(<sup>11</sup>) See M. Prieto Goberna, *op. cit.*, p. 65.

(<sup>12</sup>) COM (1999) 719: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:51999DC0719&rid=1> (See A. Mayoral, *op. cit.*, 24-25).

(<sup>13</sup>) Including, among others, the mad cows episode (See M. Prieto Goberna, *op. cit.*, p. 65).

(<sup>14</sup>) Regulation of the European Parliament and of the Council of 28 January 2002 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. In fact, this Community Regulation is applied «... to all stages of production, processing and distribution of food and feed» (article 3.1). In addition, said Regulation often refers to *the food supply chain*: - Recital No. 39 mentions «... the whole food and feed supply chains... », etc. Furthermore, the fourth Recital of the new Regulation proposed by the Commission insists that «the basic Union rules with regard to food and feed law are laid down in Regulation (EC) No. 178/2002... », stating that «in addition to those rules, more specific food and feed law covers different areas such as animal nutrition, including medicated feeding stuffs, food and feed hygiene, zoonoses, animal by-products, residues of veterinary medicinal products, contaminants, control and eradication of animal diseases with a human health impact, food and feed labelling, plant protection products, food and feed additives, vitamins, mineral salts, trace elements and other additives, food contact materials, quality and compositional requirements, drinking water, ionisation, novel foods and genetically modified organisms (GMOs)». On Regulation No. 178/2002 see *Objetivo: la seguridad alimentaria en la Unión Europea (el Reglamento (CE) n. 178/2002)*, in *Gaceta Jurídica de la UE*, No. 223, 2003, 59-71; M. V. Fourgoux Jeannin, *La construcción europea de la autonomía del Derecho alimentario*, in L. Bourges, *Sociología y Derecho alimentarios*, Aranzadi, 2013, 76-78; and M. Hagenmeyer, *Modern food safety requirements: according to EC Regulation No. 178/2002*, *Zeitschrift für das gesamte Lebensmittelrecht*, Vol. 29, No. 4, 2002, 443-459.

Since April 2014 this Regulation has undergone a full review, which has involved applying the following principles:

- Effectiveness in achieving its objectives;
- Efficiency (associated costs and benefits, consequences for and measures aimed at SMEs);
- Consistent implementation, identifying duplication and areas of overlap;
- Relevant objectives and adapting to current circumstances;
- Added value for the EU<sup>15</sup>.

No doubt many other Community standards also need to be trimmed<sup>16</sup> and updated, including those covering traceability, application of the precautionary principle, experiences with emergency measures and crisis management, and the RASFF (Rapid Alert System for Food and Feed)<sup>17</sup>.

The general view regarding the RASFF, and one which I share, is that any review should focus on checking whether the current corpus juris is still fit for purpose, or whether in fact it needs to be modernized, simplified or improved. Such a review should pay special attention to the following criteria<sup>18</sup>:

- *effectiveness* (have the pre-defined objectives been achieved?)
- *efficiency* (is the cost-benefit balance positive?)
- *consistency* (is it consistent with other EU policies?)
- *relevance* (is it still important for the EU to inter-

vene in this field?)

- *added value* (can the legislation be improved?)

Whilst this paper was being drafted, the Commission hired external researchers to gather information on the procedures used by the authorities responsible for crisis management in different Member States. Such data, including relevant case studies and documentation, will be gathered from the RASFF's national contacts and other stakeholders by means of surveys and interviews. Once it is ready, the Commission is expected to publish an initial working document on potential areas of intervention, however difficult these may be to predict at the current time<sup>19</sup>.

I cannot discuss here all the EU food regulations which need re-examining within the REFIT framework. I will however highlight one example: the needlessly complicated nature of the rules around food information. This despite recital 9 of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers<sup>20</sup> stating that "This Regulation will both serve the interests of the internal market by simplifying the law, ensuring legal certainty and reducing administrative burden, and benefit citizens by requiring clear, comprehensible and legible labelling of foods". Even though the European legislator has now addressed the issue of labelling through a Regulation which can alone be

<sup>(15)</sup> See C. Vidreras Pérez, *op. cit.*, 15-16.

<sup>(16)</sup> *Sic* in A. Mayoral, *op. cit.*, p. 25.

<sup>(17)</sup> See C. Varallo, *El RASFF (Rapid Alert System for Food and Feed): nuevos retos y futuro del sistema de alertas* en *Lecciones de Derecho alimentario 2015-2016*, Thomson Reuters Aranzadi, 2015, 231-257.

<sup>(18)</sup> *Ibidem*, 256-257.

<sup>(19)</sup> See A. Mayoral, *op. cit.*, 26-27. For C. Varallo, (*op. cit.*, p. 257), areas in particular need of exploration include levels of accuracy when it comes to identifying situations of risk which might trigger an alert, transparency, and the protection of confidentiality.

<sup>(20)</sup> Regulation of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004. On this Regulation see S. Bañares Vilella, *1169 preguntas y respuestas sobre el etiquetado de los alimentos [e-bok] 2015*; P. Borghi, *El nuevo marco normativo europeo relativo al etiquetado y la información al consumidor*, in *Lecciones de Derecho alimentario 2015-2016*, Thomson Reuters Aranzadi, 2015, 89-109; H. Bremmers, *An Integrated Analysis of Food Information to Consumers: Problems, Pitfalls, Policies and Progress*, in *Proceedings in Food System Dynamics*, 2012, 614-627 (text available in the following Internet page, consulted on 27.2.2013: <http://131.220.45.179/ojs/index.php/proceedings/article/view/262/243>); L. Costato et al., *Compendio di diritto alimentare*, Cedam, 2013, 220-233; M. Ferrari and U. Izzo, *Diritto alimentare comparato*, Il Mulino, 2012, 126-131; A. Mayoral, *op. cit.*, 27-28; P. Nihoul, and E. Van Nieuwenhuyze, *L'étiquetage des denrées alimentaires: une pondération réussie entre intérêts contradictoires?*, *Journal de droit européen*, Vol. 20, No. 192, 2012, 237-243; and I. Segura Roda, *Etiquetado e información al consumidor: un recorrido por el Reglamento (UE) núm. 1169/2011*, also in *Lecciones de Derecho alimentario 2015-2016*, Thomson Reuters Aranzadi, 2015, 113-126.

directly and simultaneously implemented throughout the European Union, this Regulation is even longer and more complex<sup>21</sup> than the previous one, not only in terms of content (as becomes clear from comparing the rules relating to each aspect of the legislation), but above all in terms of regulatory structure. Hence Regulation No. 1169/2011 frequently refers to delegated acts, which should be adopted by the European Commission in relation to “non-essential” aspects of the Regulation (pursuant to the first paragraph of Article 290 TFEU). These aspects are by no means secondary, but include matters such as the use of symbols, pictograms and other non-verbal signs, additional health indications, the criteria for the location of mandatory information about carriers other than the label, legibility criteria, exemptions from lists of ingredients, the makeup of lists of allergens (Annex II), ways of expressing net amounts, nutritional statements, etc.<sup>22</sup>.

### 3.- Conclusion

As noted earlier, we shall have to wait to learn of the results of the Regulatory Fitness and Performance programme (REFIT). The programme’s purpose is to take action to make EU law simpler and to reduce regulatory costs, thus contributing to a clear, stable and predictable regulatory framework supporting growth and jobs. Simplification can take a number of forms:

- Changes to existing law;
- Codification: all amendments made to one piece of legislation over the years are incorporated into a single new act, reducing volume and complexity;
- Recasting: similar to codification, but the legislation is amended at the same time as previous amendments are incorporated to form one consolidated text;
- Repeal: unnecessary and irrelevant laws are

removed;

- Review/sunset clauses: laws are reviewed or automatically removed after a given period;
- Revision: laws are modified to keep them up to date.

If it enables us to achieve its proposed objectives (the elimination of trade barriers; well-designed, efficiently implemented legislation), then REFIT can only be welcomed. Meanwhile we shall have to use our common sense to do our best and hope that the result is the desired one<sup>23</sup>. It is a fact that regulation always affects business, whether positively by promoting competition, innovation, sustainability and efficiency in the European food supply chain, or indeed negatively. Situations such as the economic crisis which has afflicted Europe in the last few years help us to draw conclusions on the role of regulation as we observe how the sector behaves. Therefore the efforts made by Community institutions to revise, simplify and update the regulatory framework governing the sector deserve recognition. It is not a question of deregulating but, again, one of using common sense<sup>24</sup> - that same common sense which tells us that before adopting new measures we need to understand their potential impact in social and environmental as well as economic terms<sup>25</sup>.

We have in recent times witnessed Europe’s contradictory response to the issue of biotechnology - a response often influenced by political opportunism. Today, as the legislation governing GMOs is being reviewed, Community institutions complain about how hard it is to adopt decisions on controversial issues autonomously (this legislation being a good example). Thus they are once again allowing member states to put forward their own alternative versions, with all the risks to the internal market which that implies<sup>26</sup>.

We need to find a way to prevent the system being so complicated that it hinders innovation by creating lengthy and complicated procedures (e.g. new

<sup>(21)</sup> *Sic* in P. Borghi, *op. cit.*, p. 93.

<sup>(22)</sup> See C. Vidreras Pérez, *op. cit.*, 17-18.

<sup>(23)</sup> See M. Prieto Goberna, *op. cit.*, p. 88.

<sup>(24)</sup> *Ibidem*.

<sup>(25)</sup> *Ibidem*.

<sup>(26)</sup> See A. Mayoral, *op. cit.*, 25-26.



foods, statements)<sup>27</sup>. But neither must we forget that at the national level too, such as in Spain, current legislation urgently needs to be simplified and implemented in a coordinated manner.

## **ABSTRACT**

*Current EU food legislation is extremely complex, and unsustainably so. Furthermore, in the context of a food chain consisting of several stages between production and consumption, various factors have*

*helped foster even greater levels of complexity, such as the national exceptions included in the Regulations, the neo-protectionist tendencies of some Member States (typical of a period of generalised economic crisis), etc. A world which is increasingly globalized, competitive and dominated by new technologies needs an effective and efficient regulatory environment: in this context, the Commission has set up the “REFIT Platform” to conduct an ongoing dialogue with Member States and stakeholders on improving EU legislation in the context of the Regulatory Fitness and Performance Programme.*



<sup>(27)</sup> See M. Prieto Goberna, *op. cit.*, p. 88.