

DISCUSSION PAPER

Leibniz Institute of Agricultural Development in Transition Economies

The Architecture of Food Safety Control in the European Union and the Eurasian Economic Union

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TABLE OF CONTENTS

A. Food safety institutions and governance in the EU and EAEU:	
Supranational level	7
1. Food safety Law in the EU and EAEU	7
2. Food safety institutions in the EU and EAEU.....	8
European Union.....	9
Eurasian Economic Union	11
3. Principles of the food safety system in the EU and EAEU	17
European Union.....	17
Eurasian Economic Union	22
4. Enforcement of EU and EAEU level legislation.....	26
European Union.....	26
Eurasian Economic Union	28
5. Harmonization of EU and EAEU Legislation with international standards.....	30
European Union.....	31
Eurasian Economic Union	32
B. The food safety system at the country level	34
1. Country level legislation and institutions	35
European Union: United Kingdom	35
Eurasian Economic Union: Kyrgyz Republic.....	37
2. Changes in sanitary and phytosanitary control under accession:	
EU and EAEU.....	40
EU: The example of Croatia's accession	40
EAEU: The example of Kyrgyz Republic's accession.....	41
EAEU: The example of Armenia's accession.....	42
3. The effectiveness of supranational legislation on food safety at the country level.....	43
European Union.....	43
Eurasian Economic Union	44
C. Conclusions: Main differences in food safety systems between the EU and the EAEU	46
D. Sources	49

LIST OF TABLES

Table 1:	EU and EAEU Legal Instruments	8
Table 2:	Implementation of key functions at the supranational level: Which bodies are responsible for which functions?	9
Table 3:	Food safety principles: Comparative table of supranational provisions.....	20
Table 4:	EU and EAEU enforcement measures: Does supranational legislation prescribe certain enforcement principles?.....	29
Table 5:	SPS harmonization activity: Participation in Codex Alimentarius, OIE and IPPC.....	32
Table 6:	Accession process to EU/EAEU: How much time is required for new members to accede?	41

LIST OF BOXES

Box 1:	What are sanitary and phytosanitary measures in the WTO SPS Agreement?	5
Box 2:	Democratic checks and balances: The European Commission and the Eurasian Economic Commission.....	12
Box 3:	"Horizontal" and "vertical" provisions	19
Box 4:	EAEU policies and member state sovereignty	22

THE ARCHITECTURE OF FOOD SAFETY CONTROL IN THE EUROPEAN UNION AND THE EURASIAN ECONOMIC UNION

The system of surveillance and control of food safety and animal and plant health is a vital building block of the single market in both the European Union (EU) and the Eurasian Economic Union (EAEU). The free movement of goods (the first of the four fundamental freedoms of the EU and the EAEU) throughout the union depends on the proper functioning of a union-wide system of assessment and control of food safety and animal and plant health risks. Sanitary and phytosanitary measures taken in response to a food safety threat, while they are a necessary part of the system for food safety control, are barriers to the free movement of goods within the union. They can be avoided only by ensuring an effective system of preventative control. While food safety is a worthwhile goal in and of itself, it is important to recognize that it is also an indispensable "pillar" upon which the free movement of goods rests.

Box 1: What are sanitary and phytosanitary measures in the WTO SPS Agreement?

"Sanitary or phytosanitary measure – any measure applied:

- a. to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
- b. to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;
- c. to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or
- d. to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.

Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, inter alia, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety."

Source: WTO SPS AGREEMENT, Annex A (Definitions).

The present analysis of the "architecture" of food safety control systems in the European Union and the Eurasian Economic Union is designed to assess the degree to which the present systems in the two unions can ensure effective food safety control, thus ensuring the free movement of goods within the single market. It is a comparative analysis of the EU and EAEU systems for ensuring food safety through sanitary and phytosanitary measures (Box 1). The analysis spans both central and country level institutions for ensuring food safety in the countries of these two economic unions. We first compare laws, institutions and the governance of food safety issues in the two unions at the supranational level. Second, we describe and compare the food safety systems at the country level in both unions. Last, we provide a synthetic conclusion that reports our findings about the key differences between food safety control in the European Union and the Eurasian Economic Union.

We conclude that there are cardinal differences between the food safety systems in the two unions both at the central and country levels. The overhaul of the EU food safety control system in the 2000s led to a significant transfer of decision making authority to EU institutions.

Very little, if any, of the EU-type central edifice exists in the Eurasian Economic Union. In fact, despite the existence of the Eurasian Economic Commission, the Eurasian Economic Union operates an extremely decentralized system of food safety control. At the country level the roles and responsibilities of institutions, while relatively clear in the EU countries, are not well defined or well understood in the countries of the EAEU. There are also major differences in the accession process within the two unions. While in the EU this is a long and transformative process, it is more a political process in the EAEU. Finally, while the EU seems to have a relatively effective system of food safety control, we find that in the EU the lack of Union-wide rules concerning the system of national controls means that there is no guarantee of coherence or comprehensiveness.

A. FOOD SAFETY INSTITUTIONS AND GOVERNANCE IN THE EU AND EAEU: SUPRANATIONAL LEVEL

Every economic union struggles to balance authority between member states and some sort of supranational authority. This first chapter focuses on the governance of sanitary and phytosanitary issues within the EU and EAEU, identifying the competences of supra-national regulation. Supranational institutions in an economic union can be distinguished from inter-governmental institutions by the nature of decision making authority. Whereas a supranational authority is ceded certain limited decision-making powers in a particular field by governments of member states, an intergovernmental institution relies on joint decision-making by member state representatives. An EU institution, such as the European Commission (EC), for example, has supranational competences, but it possesses these competences only to the extent that they are conferred on it by member states. In the EAEU the Eurasian Economic Commission (EAEC) has the authority to draft and issue Decisions on issues dealing with the single market that are binding on the member states of the EAEU.¹

We first consider food safety law in the EU and EAEU, followed by an analysis of the institutions in the two economic unions to ensure food safety. We then analyze the principles of food safety policy in the EU and EAEU and their enforcement. Finally, we analyze how and to what extent international food safety standards are integrated into food safety legislation and the functioning of the food safety surveillance and control system.

1. FOOD SAFETY LAW IN THE EU AND EAEU

There are three basic types of EU legislation: regulations, directives and decisions (Table 1). In addition, the EC may issue non-binding recommendations. A regulation is similar to a national law with the difference that it is applicable in all EU countries. Regulations are supra-national legislation. Directives set out general rules to be transferred into national law by each country as it deems appropriate. A decision only deals with a particular issue and specifically mentioned persons or organizations.

EU directives set out results that all EU Member States must achieve. National authorities then have the choice of form and method to meet this result. Directives are used to bring different national laws into line with each other, and are particularly common in matters that affect the operation of the single market (e.g. product safety standards). Each directive contains a deadline by which Member States must adopt national transposition measures which incorporate the obligations of the directive into national law. Member States must provide the Commission with the texts of transposition measures. The Commission then examines them to ensure that they achieve the results required by the directive.

Two bodies of the Eurasian Economic Commission, the Council and the Collegium, have the right to issue three types of legislative acts-regulatory decisions, administrative directives and non-binding recommendations. EAEC Council or Collegium decisions are included in

¹ The description of the competencies of the EAEC in Annex I of the Treaty studiously avoids the term "supra-national." We use the term to describe the situation where an authority is ceded certain limited decision-making powers in a particular field by governments of member states. The Eurasian Economic Commission (EAEC) has the authority to draft and issue Decisions on issues dealing with the single market that are binding on the member states of the EAEU. In general, we agree with ROBERTS and MOSHES (2015) that the EAEC is more of an intergovernmental than supranational institution.

EAEU law and are subject to direct implementation in EAEU member states. These are analogous to EU regulations. The Council and Collegium of the EAEC also issue Directives (rasporiazheniya), used to define the functions, goals, rights and obligations for an organization or employee. Finally, the two bodies of the EAEU issue non-binding recommendations.

Table 1: EU and EAEU Legal Instruments

Nature of legal instrument	European Union	Eurasian Economic Union
Supra-national legislation applicable to all member countries	EU Regulation	EAEC Council Decision (reshenie) EAEC Collegium Decision (reshenie)
General rules to be transferred into national law by each country as deemed appropriate	EU Directive	Does not exist
Documents that define functions, goals, rights and obligations of administrative structures and employees for fulfilling concrete tasks in the operation of an organization	None	EAEC Council Directive (rasporiazheniya) EAEC Collegium Directive (rasporiazhenie)
A legal instrument which is binding upon individuals, organizations or member states, typically rulings of the Commission. Examples are rulings on proposed mergers, and day-to-day agricultural matters (e.g. setting standard prices for vegetables).	EU Decisions	None
Non-binding recommendations	EU Recommendation	EAEC Council Recommendation (rekommendatsiya) EAEC Collegium Recommendation (rekommendatsiya)

Source: EAEU Treaty, annex 1; http://europa.eu/eu-law/decision-making/legal-acts/index_en.htm.

2. FOOD SAFETY INSTITUTIONS IN THE EU AND EAEU

While the legal instruments available to the EU and EAEU supranational institutions are somewhat similar, the competences of these institutions in the area of food safety and agricultural health policy are quite different. This section examines these institutions, paying particular attention to the authority they hold to develop and implement food safety policy. Clear differences emerge between the EU and the EAEU regarding the development of policy (supranational vs. intergovernmental), the independence of scientific risk assessment from member states and the implementation and enforcement of policy. In the EU there are separate, adequately resourced institutions in charge of the functions of developing and adopting policy; providing independent scientific advice; exercising oversight of national control systems; and implementing rapid alert and notification systems. In the EAEU, while there exist bodies for developing and adopting policy, the policy development function is not sufficiently independent from the member states, while some of the other functions – exercise of oversight of national control systems, rapid alert and notification systems – are significantly underdeveloped.

European Union

The *European Commission* is the key institution in charge of developing food safety policy, although it does so in conjunction with inputs from the European Parliament and with the use of the expert advice and reports provided by the European Food Safety Authority (EFSA) and the Food and Veterinary Office (FVO) (Table 2). The Commission derives its powers from article 17 of the Lisbon Treaty and, as regards SPS measures, article 4(2) of the Treaty on the Functioning of the European Union.

The Commission's role is to develop policy and legislation. Its work is well-informed, since it can draw on the scientific opinion of EFSA and on the data generated by FVO audits and rapid alert systems in order to assess risks and develop policies accordingly. There are a number of aspects where one can contrast the EU's approach to other countries (including the EAEU) in the sense that, comparatively speaking, the EU is, if anything, *too effective*:

**Table 2: Implementation of key food safety functions at the supranational level:
Which bodies are responsible for which functions?**

Function	European Union	Eurasian Economic Union
Policy development	European Commission	1. Eurasian Economic Commission
Policy adoption	European Commission, European Parliament	1. EAEU Supreme Council. 2. Eurasian Intergovernmental Council 3. Eurasian Economic Commission
Provision of scientific advice	European Food Safety Authority	No. Only at country level
Audits and oversight of control systems	Food and Veterinary Office	No.
Rapid alert and notification systems	EUROPHYT, RASFF, TRACES	No.

Source: LISBON TREATY, Reg. 178/2002, Reg. 882/2004, European Commission website, EAEU Treaty.

- The EU, in response to the food safety crises of the 1990s, has developed a system which achieves a high level of protection of human, animal and plant health. For some countries importing to the EU, this system is so rigorous as to constitute a barrier to trade, even if, technically speaking, the EU complies with SPS rules.
- In operating according to the precautionary principle, the EU sometimes adopts a stricter approach than other countries as regards new technologies and potential health risks. This is often in response to consumer concerns.
- The development of the food processing and distribution system within the EU has led to the growth of private standards (e.g. as developed by supermarket chains to ensure high quality of produce). These private standards place an additional hurdle to be overcome by producers in lesser developed countries who wish to export to the EU. Whilst such standards are not mandatory, the opportunities to export are reduced if one does not comply with them.

The *European Food Safety Authority (EFSA)* is a separate agency that provides independent scientific advice on food and feed safety. It is the key provider on risk assessment information, and therefore informs the Commission's policy-making process. It was established in 2002

as a central component of EU policy under the Food Safety Law (Reg. 178/2002), and has scientific panels as well as a management board. It currently employs approximately 450 staff. EFSA is established by Chapter 3 of the EU Food Safety Law (articles 22-49 of Reg. 178/2002).

EFSA's role is to provide the scientific analysis to be used as a basis for making decisions concerning SPS measures. The significant investment that has been made into establishing EFSA and providing sufficient capacity to carry out its functions, ensures that it is a respected institution. Further, its focus on risk assessment and independence from the bodies that engage in risk management ensures that it maintains that respect.

There is a division of responsibilities, with EFSA responsible for risk assessment and the Commission being the primary institution responsible for risk management. The food safety crises which led to major reform in the EU were adjudged to have been caused, in part, by the fact that in some EU member states risk analysis and risk management were carried out by the same institutions, leading to potential conflicts of interest (e.g. the Ministry of Agriculture, Food and Fisheries in the UK at the time of the "mad cow disease" crisis). However, even now the picture among EU member states is mixed, with some still failing to ensure that risk analysis and risk management are handled by separate bodies. However, since the key research and policy decisions are taken by the EFSA and the Commission respectively, the lack of uniformity in national positions on this issue is not so important.

The Food and Veterinary Office is a directorate within the Directorate-General for Health and Food Safety (previously DG SANCO). The FVO is a directorate of the Commission's Directorate-General of Health and Food Safety. Its powers are set out in Title VI (articles 45-53) of Reg. 882/2004. The FVO likewise has a role to play in guaranteeing fulfilment of SPS measures. It does this through its role in overseeing national enforcement of EU SPS measures and assessing control systems in third countries wishing to export to the EU.

The FVO conducts regular audits both in the member states and in countries importing to the EU. With a team of 180 professionals, it is able to conduct a large number of audits: for example, more than 160 audits were planned for 2015 in the EU member states, and over 50 additional audits in trade partner countries. Audits are generally focused on specific issues based on risks previously identified. Summary reports of the audits are available online² and openly describe failings and risks identified as well as recommendations for improvement.

The FVO also publishes annual reports of its activities as well as country reports (describing the official control systems in each of the member states). In addition, it undertakes technical evaluations of new border inspection post facilities, provides information to third countries who wish to export to the EU, and runs the "EUROPHYT" notification system for phytosanitary interceptions at EU border posts. Under this system, plant health authorities of the member states notify if they have intercepted a non-compliant phytosanitary consignment, and this notification is automatically sent to the authorities of other member states and the authorities of the exporting countries. The database also generates statistics which enable risk assessments to be made.

Similar notification systems exist both for food safety and for veterinary health issues. The Rapid Alert System for Food and Feed (RASFF) ensures urgent communication between the national food safety authorities of EU member states, which enables authorities to organize the swift recall of unsafe food and therefore the timely resolution of food safety crises. The

² http://ec.europa.eu/food/fvo/audit_reports/index.cfm.

system was established in 1979 and has a legislative basis both in Reg. 178/2002 and more specifically in Reg. 16/2011³, which stipulates that the system must operate 24/7.

TRACES (Trade Control and Expert System) is another European-wide notification system operating under the Directorate General for Health and Food Safety. It enables access to national traceability databases and therefore enables one to trace the movement of animals within and across borders. It includes an animal disease notification system which, in combination with the database, enables the authorities to trace animals and consignments of animal products and thus act quickly to deal with epizootic risks.

Eurasian Economic Union

It would be unfair to expect the EAEU in its short history to have developed institutions to the same extent as the EU. The EAEU is a fledgling organisation, whilst the EU has decades of experience in integration processes and moreover has made a concerted effort to achieve better food safety regulation in the last two decades following the food safety crises of the 1990s.

The EAEU is clearly making a start towards effective supranational regulation, but has a long way to go. Some of the key institutions are in place, such as the EAEC and its SPS department. Many of the key principles are also articulated, but practice often lags far behind, partly because of insufficient capacity at the national level (e.g. as regards implementation of HACCP) but perhaps also because of failure to comprehend the depth of some of the issues (e.g. traceability systems).

Some structures are not yet in place (e.g., rapid alert systems) whilst others are in the early stages. For instance, ad hoc joint inspections take place, but only in regard to third party states, and only as regards individual enterprises, not as regards the assessment of national control systems. Moreover, governing principles for national control systems of the member states are not prescribed. It will no doubt take some years for the member states to acknowledge the need for – and agree on – stricter and more effective regulation at the supranational level.

Differences between the EU and EAEU

Arguably, the biggest contrasts between the EU and the EAEU approaches are as regards the following issues:

- Lack of democratic structures
- Lack of jurisdiction to ensure uniform enforcement of legislation
- Lack of detailed procedures and institutions to put into practice the principles espoused

Each of these issues is discussed in turn below.

Lack of democratic structures

Box 2 below compares the European Commission and the Eurasian Economic Commission. In brief, a combination of factors (lack of independent vetting of the commissioners, small number of member states and de facto dominance by the most powerful member – the

³ EUROPEAN COMMISSION (2011): Regulation 16/2011 "laying down implementing measures for the Rapid alert system for food and feed." *Official Journal of the European Communities*, (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2011:006:FULL&from=EN>).

Russian Federation – in whose capital the Commission is located) means that the Commission's independence from the member states is limited.

Lack of jurisdiction to ensure uniform enforcement of legislation

The EU lays down a number of principles concerning national control systems, has an agency – the Food and Veterinary Office – to audit national control systems, and has a single market scoreboard which enables it to compare member states' track records in transposing EU legislation into national regulations⁴. The EAEU, by contrast, fails on all three counts: it prescribes hardly any principles regarding national enforcement systems, does not have the authority or administrative capacity to maintain oversight of national control systems, and does not operate a scoreboard. Thus there is in effect very little supranational control over the extent to which the member states adopt harmonised legislation and the extent – and manner – to which they enforce implementation of EAEU legislation.

Box 2: Democratic checks and balances: The European Commission and the Eurasian Economic Commission

The European Commission is the executive branch of the EU, and consists of 28 Commissioners (one per member state) assisted by a body of European civil servants. The Commissioners are led by the President of the Commission, who is proposed by the European Council and elected by the European Parliament. The other 27 Commissioners are then appointed by the Council in agreement with the President, and the overall composition is approved by the Parliament. There are a number of factors which ensure that the Commissioners, despite being nominated by the individual member states, in practice act independently of their country of origin. The nomination of the President of the Commission should take into account the latest parliamentary elections, and the nominated President is then elected by the Parliament. Because this is done before the appointment of the other commissioners, it has an influence in the final selection of candidates for the other 27 positions in the Commission. Further, in debating the nominations for the Commission, the Parliament can interview individual nominees. Although individual nominees cannot be explicitly rejected by Parliament, the overall composition of the Commission is subject to its approval. Finally, the successful appointees take an oath upon appointment to act "in the general interest of the Union". The Commission is located in Brussels, the capital of one of the smaller member states, and has a staff of around 23,000, less than 18 % of which are Belgian nationals.

The Eurasian Economic Commission consists of an Interstate Council (the "EAEC Council"), a Collegium and supporting staff. The Council consists of five members: the deputy heads of government of each member state. The EAEC Collegium currently consists of 10 members: 2 from each of the 5 member states. Members are appointed by the Supreme Council (heads of state from the member states). As there is no "Eurasian Parliament" or similar structure, there is no procedure of approval of the appointments.

Article 34 of Appendix II of the Treaty includes the following provision: "When exercising their powers, members of the Collegium of the Commission shall be independent of all public authorities and officials of the Member States and may not request or receive instructions from government authorities or officials of the Member States." Clauses 35-37 list grounds for early termination of office, however the list does not include failure to act in the interests of the Union, independent from national interests. The Commission is located in Moscow with a staff of around 1200, 80 % of which are Russian nationals. Currently there are only 6 Armenian nationals on staff.

Source: LISBON TREATY, Wikipedia, EAEU Treaty, EAEC website.

⁴ [http://ec.europa.eu/internal_market\(scoreboard/.](http://ec.europa.eu/internal_market(scoreboard/.)

Lack of detailed procedures and institutions to put into practice the principles espoused

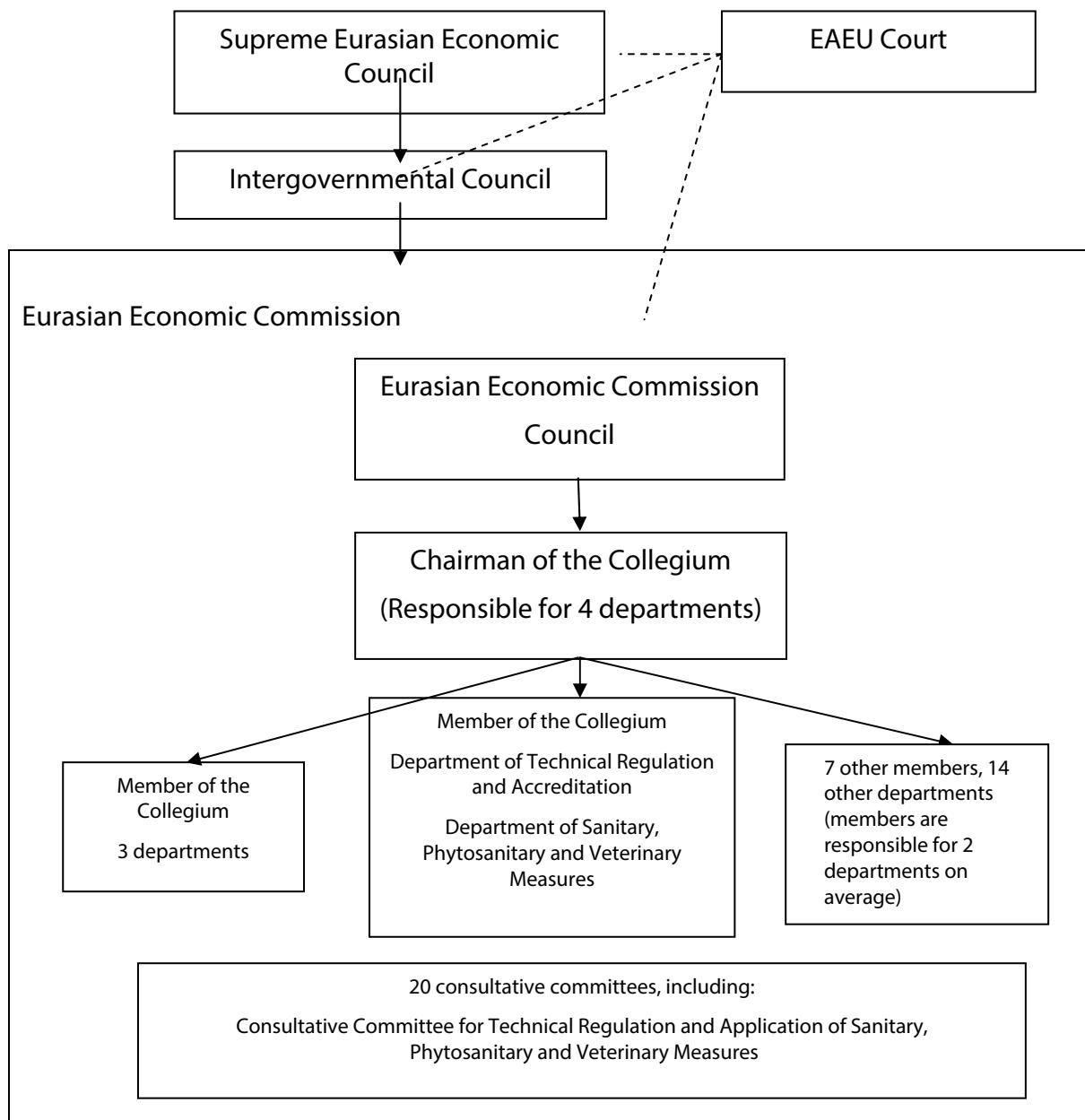
The EAEU lacks supranational institutions to put into operation rapid alert systems and to ensure the provision of independent scientific advice. Furthermore, although the governing documents of the union refer to principles such as traceability and animal identification, the necessary detailed provisions to ensure effective application of those principles are lacking.

EAEU Authorities

The EAEU authorities and their powers are established by the provisions of Section III of the EAEU Treaty. The EAEU authorities include the following (see Figure 1):

1. *Supreme Eurasian Economic Council* (hereinafter the Supreme Council). The EAEU Supreme Council, consisting of the leaders of EAEU member states, considers the principal matters of EAEU activities, determines integration development policy and strategy, areas and plans and makes decisions aimed at the implementation of EAEU objectives, including those pertaining to technical regulation and SPS measures. The decisions and directions of the Supreme Council are adopted by virtue of consensus. The Supreme Eurasian Economic Council was established by Article 10 of the EAEU Treaty.
2. *Eurasian Intergovernmental Council*. The Eurasian Intergovernmental Council, consisting of the heads of the EAEU member state governments, was established by Article 14 of the EAEU Treaty. Its function is to ensure the implementation of, and control over, the execution of the EAEU Treaty, international treaties within the EAEU and the decisions made by the Supreme Council. It also considers (at the suggestion of the EAEC Council) matters upon which the EAEC Council is unable to reach consensus. The Intergovernmental Council also has authority to request the EAEC to cancel or amend its decisions. If the EAEC does not consent the Intergovernmental Council may appeal to the Supreme Council to overturn EAEC decisions. It may also decide to suspend decisions made by the EAEC Council or Collegium. The decisions and directions of the Intergovernmental Council are adopted by virtue of consensus.
3. *EAEU Court*. The EAEU Court was established by Article 19 of the EAEU Treaty. The status, composition, competence, operation and establishment procedure of the EAEU Court are set out by the EAEU Court Statute in Annex II to the EAEU Treaty. The court adjudicates disputes, arising with regard to the implementation of the EAEU Treaty, international treaties within the EAEU and (or) decisions of the EAEU authorities, including those pertaining to technical regulation and SPS measures: (i) at the request of EAEU member states or (ii) at the request of a business entity.
4. *Eurasian Economic Commission (EAEC)*. The Eurasian Economic Commission (EAEC) was established by Article 18 of the EAEU Treaty as the standing regulatory authority of the EAEU. The principal goal of the EAEC is to ensure the functioning and development of the EAEU through elaborating proposals on economic integration, including those pertaining to technical regulation and SPS measures. The EAEC operational rules are approved by the Decision of the Supreme Council dated December 23, 2014 No. 98.

Figure 1: Organogram of the Eurasian Economic Union and its SPS and TBT functions



Source: The authors, based on the EAEC website.

The EAEC consists of the Interstate Council and Collegium. The division of powers and functions of the EAEC Council and Collegium are established in Annex I to the EAEU Treaty and the Decision of the Supreme Economic Council (2014) number 98. The EAEC Interstate Council, as the more authoritative body, exercises overall regulation of integration processes in the EAEU, as well as overall governance of Commission activities. Each EAEU member state delegates one representative at the level of deputy head of the government to the EAEC Interstate Council. The EAEC Collegium is the EAEC's executive authority. Its members are the representatives of the EAEU member states, based on the principle of equal member states

representation.⁵ Each of the Collegium members supervises particular technical areas, such as economic and financial policy, industrial and agricultural policy, trade, customs issues, technical regulation, etc. Decisions, directions and recommendations of the EAEC Intergovernmental Council are made by virtue of consensus, while the decisions, directions and recommendations of the EAEC Collegium are adopted by qualified majority⁶ or consensus. The Supreme Council establishes the list of sensitive matters, on which the decisions are made by the EAEC Collegium by consensus⁷.

The EAEC Collegium responsible for technical regulation includes a Department on SPS issues. The SPS Department was established by the EAEC Council in Annex I to the EAEU Treaty. The SPS Department consists of three divisions that cover different areas: sanitary measures division, veterinary measures division, phytosanitary measures division. When making decisions pertaining to SPS measures and technical regulation, the EAEC is supposed to assess regulatory impact, though the methodology of assessment is not known.

The EAEC may be granted by the EAEU Supreme Council the right to sign international treaties on matters of its competence, including matters of SPS measures and technical regulation⁸. The EAEC is also responsible for fulfilling its obligations under the Treaty of the Customs Union (EAEU) Member States on the Elimination of Technical Barriers to Mutual Trade with CIS Member States which are not CU (EAEU) Member States. Under this treaty the EAEC makes decisions on the right of CIS member states to use any specific CU (EAEU) technical regulation and signs a protocol with those states on the use of the technical regulation.

An EAEC Collegium decision (September 18, 2012) established a Consultative Technical Regulation and SPS Committee. The Committee consists of the heads of EAEU member states authorities, the competence of which includes SPS measures and technical regulation application. The Collegium member in charge of technical regulations is responsible for the overall management of committee operations. Sub-committees for the key areas of EAEC activities pertaining to SPS measures and technical regulation, as well as expert work groups for the due diligence of EAEU draft regulations may be established.

The Consultative Technical Regulation and SPS Committee is designed to hold consultations with representatives of EAEU member states and draft proposals pertaining to SPS measures and technical regulations, decisions of the Supreme Economic Council and the EAEC. The decisions of the Committee are of advisory rather than mandatory nature. At the same time, the procedure of developing and adopting EAEU regulations includes their mandatory review at the draft stage by the Committee. So, any draft EAEU statutes on SPS measures must be approved by the Committee.

The EAEC Collegium established (EAEC Collegium Decision, 25 May 2015) a consultative committee for the protection of consumer rights in EAEU member states. The objective of Committee is to create equal conditions in EAEU member states for the protection of consumer rights from unscrupulous activities of business entities, and to prepare recommendations regarding the application of measures to enhance the efficiency of competent authorities'

⁵ As of February 2, 2016 the EAEC Collegium composition includes two representatives from each of the five EAEU member states.

⁶ Qualified majority constitutes two thirds of the votes of the total EAEC Collegium members.

⁷ The list of sensitive matters, on which the Collegium makes decisions by consensus is established in Annex 1 of the EAEU Treaty.

⁸ As of September 1, 2015 no such powers were delegated to the EAEC by the Supreme Council pertaining to technical regulation and SPS measures.

interaction in this sphere. The Chair of this committee is to be appointed by the EAEU Supreme Economic Council. Until this decision is made the EAEC Collegium member (Minister) in charge of technical regulation acts as chair.

Though the EAEC has the authority to develop EAEU policies in many areas, its authority is in reality quite limited. The EAEC has no right to officially explain or interpret EAEU regulations, including those of the EAEC itself. Second, the EAEC has no defining role in any trade disputes that arise between the EAEU member states, as well as between the EAEU and any non-member country. Third, the EAEC exercises no functions for the enforcement of EAEU regulations, including on SPS matters, measures and technical regulations within the EAEU (for instance, control, supervision and arbitration functions, introduction of quarantines, bans and restrictions applicable to trade, temporary SPS measures for third parties)⁹. The EAEC also does not have its own bodies and institutions for inspection, compliance assessment or risk assessment.

⁹ Article 13 of Annex 1 to the EAEC Rules and Procedures in Supreme Economic Council (2014) grants the EAEC Council powers to make decisions on the introduction of counter measures within the EAEU customs territory, including by increasing the import customs duties rates, introducing quantitative limits, temporary suspension of preferences or any other measures, affecting the results of foreign trade with the relevant state. No counter measures on SPS issues are contemplated.

3. PRINCIPLES OF THE FOOD SAFETY SYSTEM IN THE EU AND EAEU

A comprehensive approach to ensuring food safety in an economic union requires the elaboration and enforcement of principles by which the food safety regulatory system at each level is to be governed. This section therefore considers the principles of regulation set out by supranational legislation on food safety issues in the EU and EAEU. A comparison of the principles of food safety systems in the EU and EAEU is presented in Table 3.

Since the issue of the European Commission's White Paper on Food Safety (EC, 2000)¹⁰ and the more centralized approach to ensuring food safety that followed, the elaboration and enforcement of key principles of food safety throughout each member state of the European Union has become a critical tool for ensuring food safety (LEIBOVITCH, 2008). This revised EU approach marked the transition from food safety law subordinated to the development of the internal market to a comprehensive approach to food safety aimed at ensuring, first and foremost, a high level of consumer health protection (VAN DER MEULEN, 2013, p. 73). This new regulatory framework is based on regulations rather than directives, and it is the standardization of the approach to food safety throughout the Union and the enforcement of the observance of the principles therein that ensure the high level of consumer health protection.

Though a number of food safety principles are found in EAEU legislation, the EAEU has not been able to realize these principles, primarily because the mechanisms for implementation of the principles are either absent or insufficient. The EAEU food safety system is more a conglomeration of the five national food safety systems with an agreed set of obligatory food safety, animal and plant health standards levied from above with no EAEU-wide enforcement.

European Union

In the EU, SPS issues have been clearly addressed at the EU policy level, and in effect a single food safety area has been established as a result of fundamental reform that began in the last years of the 1990s and was completed in the first decade of the 21st century. This was largely as a result of a series of food safety crises in the 1990s (e.g. BSE, dioxin) which forced policy makers to acknowledge that a coordinated approach was required, involving both Community-wide legislation and institutional change.

Key aspects to the EU's approach to food safety are set out in EU Council Regulation 178/2002: "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" (hereinafter: the "Food Safety Law"). Some of those principles are stated to be "general principles of food law" and are set out in Articles 6-10:

- Article 5(1) states that "Food law shall pursue one or more of the general objectives of a high level of protection of human life and health and the protection of consumers' interests, including fair practices in food trade, taking account of, where appropriate, the protection of animal health and welfare, plant health and the environment." It is worth noting that the scope goes beyond SPS principles to include consumer protection, which is defined in more detail in Article 8.
- Article 6(1) states the general principle that "food law shall be based on risk analysis". This in turn is defined as "a process consisting of three interconnected components:

¹⁰ COMMISSION OF THE EUROPEAN COMMUNITIES (EC) (2000): White paper on food safety (COM (1999) 719 final) (Brussels: European Commission).

risk assessment, risk management and risk communication". Further, Article 6(2) states that "Risk assessment shall be based on the available scientific evidence and undertaken in an independent, objective and transparent manner."

- Article 7 refers to the precautionary principle, which permits preliminary risk management measures pending "a more comprehensive risk assessment."
- Articles 9 & 10 refers to "principles of transparency", namely public consultation and public information, the latter being particularly important when it is necessary to inform the public of newly identified health risks.

Other principles set out in the Food Safety Law include:

Responsibilities. The primary responsibility to comply with the provisions of the Food Safety Law is placed on food and feed business operators. In turn, "Member States shall enforce food law, and monitor and verify that the relevant requirements of food law are fulfilled by food and feed business operators at all stages of production, processing and distribution" (Article 17(2)).

Traceability. Article 18(1) states: "The traceability of food, feed, food-producing animals, and any other substance intended to be, or expected to be, incorporated into a food or feed shall be established at all stages of production, processing and distribution". This in turn is achieved by the so-called "one step forward, one step back" principle, which places the responsibility on food business operators to be able to identify their immediate suppliers and customers.

International standards. Article 13 provides that the EU and the Member States shall (a) contribute to the development of international technical standards for food and feed and sanitary and phytosanitary standards.

"Farm to fork" approach. Although the phrase is not specifically used in legislation, the concept is cited in EU explanatory publications as underlying the approach to food safety. The preamble to the Food Safety Law, paragraph 12 states:

In order to ensure the safety of food, it is necessary to consider all aspects of the food production chain as a continuum from and including primary production and the production of animal feed up to and including sale or supply of food to the consumer because each element may have a potential impact on food safety.

Hence, the provisions of the law apply to animal feed as well as to food.

In addition to the above general principles, another key feature of EU food safety legislation is its "horizontal" approach (see Box 3 below). Rather than adopting specific legislation for each type of food product, it lays down general rules that apply across a range of products, while setting out more stringent requirements for animal products bearing in mind the greater risks involved.

Although it is not appropriate here to set out the whole body of EU food safety legislation, the key documents are mentioned below:

Hygiene and HACCP: Regulation 852/2004 "on the hygiene of foodstuffs". This regulation states that primary responsibility is borne by food producers for establishing and implementing procedures according to HACCP principles. It also defines HACCP principles, and includes hygiene standards in annexes.

Animal product hygiene: Regulation 853/2004 "Laying down specific hygiene rules for food of animal origin". This regulation sets out specific hygiene rules in a detailed annex, as well as provisions on health and animal identification.

Rules concerning official controls I: Regulation 882/2004 "on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules" sets out the rules concerning official controls to be carried out by member states.

Rules concerning official controls II: The sister regulation to 882/2004 is Regulation 854/2004 "Laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption", includes a detailed annex on controls, veterinary inspections and audits for approval of establishments.

Microbiological criteria: Regulation 2073/2005 "on microbiological criteria for foodstuffs."

Contaminants: Regulation 1881/2006 "setting maximum levels for certain contaminants in foodstuffs."

Veterinary medicine residues: Regulation 470/2009 and Directive 2001/82/EC "on the Community code relating to veterinary medicinal products."

Pesticides: Regulation 396/2005 "on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC."

Box 3: "Horizontal" and "vertical" provisions

"Horizontal" legislation consists of provisions that apply to all, or a significant range of, food products, while "vertical" legislation applies to individual, or a small range of, food products. The EU has adopted an approach of developing horizontal regulations wherever possible. This has a philosophical and practical basis. The philosophy is that product safety is best achieved through focusing on safe processes – thus the emphasis on hygiene and HACCP. The other aspect is the establishment in separate acts of comprehensive sets of food safety parameters – microbiological criteria, contaminants, veterinary medicine & pesticide residues. Each directive/regulation sets out parameters that apply to the whole range of relevant foodstuffs. As and when scientific progress or risk analysis leads to new parameters being defined, the legislation is amended accordingly. If parameters were included in vertical product legislation, then every time a parameter changed, a whole series of legislative acts would have to be updated.

The EU approach to food safety can be considered to be comprehensive not just because it has involved a comprehensive set of legislative rules, but also because the EU has recognized that new institutions are required to uphold the scientific basis of food safety rules and enforce application of the legislation. For that reason, EU food safety reform led to the creation of:

- The European Food Safety Authority (EFSA), the prime purpose of which (under article 22(2) of the Food Safety Law) is to: "provide scientific advice and scientific and technical support for the Community's legislation and policies in all fields which have a direct or indirect impact on food and feed safety. It shall provide independent information on all matters within these fields and communicate on risks."
- The Food and Veterinary Office (FVO) was established in 1997, and operates in compliance with Regulation 882/2004 "on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules". It carries out audits and inspections in member countries as well as third countries to ensure the implementation and enforcement of EU food safety, animal health, animal welfare and plant health rules (Regulation 882/2004, articles 45 and 46).

The EFSA and FVO are key institutional innovations that address the perceived weaknesses of EU food law in the previous period, which was held responsible for the food crises of the 1990s. An EU Parliament enquiry into the structure of EU food safety governance, prompted by the BSE crisis, found that EU food safety regulations allowed domination of decisions by a single member state, politicization of science, and lack of transparency, all of which contributed

to the inability of the EU to respond to the BSE crisis quickly (EU PARLIAMENT, 1997¹¹). EFSA was created as an independent agency for the provision of scientific advice to member states and other EU institutions on matters relating to food safety risk assessment, human nutrition, animal welfare, plant health and genetically modified organisms (Council Regulation 178/2002). The introduction of EFSA was intended to separate scientific risk assessment from risk management, and to place risk assessment into a scientific institution independent of member state government politics.

The Food and Veterinary Office is one of the main vehicles for enforcement of the observation of principles of food safety governance in member states and third countries. The FVO carries out both regular and occasional audits of compliance with feed and food law, animal health and animal welfare with the authority to make recommendations to member states and the Commission on the improvement of compliance. In addition, the Commission makes the audit reports publicly available (http://ec.europa.eu/food/fvo/audit_reports/). For audits of food safety systems of third countries the Commission may take any necessary emergency measures necessary, including halting imports.

The competences of these agencies and the legislation governing them will be discussed more fully elsewhere in this report. A summary of the supranational provisions concerning key food safety principles is set out in Table 3 below.

Table 3: Food safety principles: Comparative table of supranational provisions

Principle	European Union	Eurasian Economic Union
Does legislation include the principle of protection of human life and health?	Yes. Reg. 178/2002	Yes. 1. Treaty on the Eurasian Economic Union, articles 53 & 56. 2. Technical Regulation "On food products safety" (TR CU 021/2011).
Is the principle of risk analysis comprehensively defined?	Yes. Reg. 178/2002	No.
Is transparency and communication to the public ensured?	Yes. Reg. 178/2002	Yes. 1.Treaty on the Eurasian Economic Union (Annex 1, I. General Provisions, point 2.). 2. Order of development, adoption, amendment and cancellation of technical regulations of the Customs Union (adopted by The Decision of the EAEC Council No 48, 20.06.2012). 3. Decision of the EAEC Collegium "On ensuring transparency in the process of their adoption of the Eurasian Economic Commission in the field of application of SPS measures" (No 31, 5.03.2013).
Is the primary responsibility of compliance placed on food business operators?	Yes. Reg. 178/2002	Not unequivocally. ¹² Technical Regulation "On food products safety" (TR CU 021/2011)
Are traceability principles clearly defined?	Yes. Reg. 178/2002	Yes, though not as extensively as in the EU. Technical Regulation "On food products safety" (TR CU 021/2011), article 4

¹¹ EUROPEAN PARLIAMENT (1997): "Report of the Temporary Committee of Inquiry into BSE 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".

¹² To some extent responsibility is shared with the State. Food manufacturers' obligation is to confirm that their products conform to technical requirements. Strictly speaking this is not the same as ensuring that food is safe.

Principle	European Union	Eurasian Economic Union
Are there "horizontal" food hygiene provisions?	Yes. Reg. 852/2004, Reg. 853/2004	Yes. 1. Technical Regulation "On food products safety" (TR CU 021/2011) 2. Technical Regulation "Food products in terms of marking" (TR CU 022/2011).
Is HACCP mandatory?	Yes. Applies to all food businesses other than those engaged in primary production and associated operations. Reg. 852/2004	Yes, but only for food manufacturers, not for other operators in the secondary production and distribution chain. 1. Technical Regulation "On food products safety" (TR CU 021/2011)
How are provisions concerning the following set out – Horizontally or vertically?		
• Microbiological criteria	Horizontally. Reg. 2073/2005	1. Horizontally in Technical Regulation "On food products safety" (TR TS 021/2011) 2. Vertically in Technical Regulations on certain types of food products ¹³ .
• Contaminants	Horizontally. Reg. 1881/2006	1. Horizontally in Technical Regulation "On food products safety" (TR CU 021/2011). 2. Vertically in Technical Regulations on certain types of food products.
• Veterinary medicine residues	Horizontally. Reg. 470/2009 & Dir. 2001/82/EC	1. Horizontally in Technical Regulation "On food products safety" (TR CU 021/2011) 2. Vertically in Technical Regulations on certain types of food products.
• Pesticide residues	Horizontally. Reg. 396/2005 & Dir. 91/414/EEC	1. Horizontally in Technical Regulation "On food products safety" (TR CU 021/2011). 2. Vertically in Technical Regulations on certain types of food products.
Are principles of official controls established? ¹⁴	Yes	No.
Is there provision for rapid alert systems?	Yes	No.
Is registration of food businesses mandatory?	Only for animal-origin food production	Only for animal-origin food production

Sources: Relevant EU and EAEU legislation as quoted in the columns.

¹³ Technical regulations on: "fruits and vegetables juice products" (TR CU 023/2011), "fat and oil products" (TR CU 024/2011), "safety of certain types of specialized food products, including health diet food as well as protective diet" (TR CU 027/2012), "grain safety" (TR CU 015/2011), "safety of milk and dairy products" (TR CU 033/2013), "safety of meat and meat products" (TR CU 034/2013).

¹⁴ Principles of official controls include: mandatory national control plans, conduct of inspections without prior warning, effective and proportionate enforcement measures (improvement orders, prohibition from placing food on the market, recall/withdrawal and/or destruction of unsafe food, suspension/closure of business).

Eurasian Economic Union

A number of food safety principles found in EU legislation can be found in Section XI (articles 56-59) and Annex 12 of the EAEU Treaty. Some principles which are not expressly stated in the EAEU Treaty can be found in EAEC regulations, most notably in the Technical Regulation "on food products safety" (TR CU 021/2011¹⁵). Many of these principles are based upon those found in the WTO SPS Agreement, such as harmonization with international standards, equivalence recognition, scientific risk assessment, regionalization of food safety risks and transparency. Together, the documents and the principles therein show an extensive commitment to international standards and to the incorporation of a fundamental approach to SPS regulation.

However, taken together, the principles and the mechanisms of implementation do not amount to a workable single food safety system. This is primarily because the mechanisms for implementation of the principles are either absent or insufficient under the current organization of public authorities. The EAEU food safety system is more a conglomeration of five national food safety systems with an agreed set of obligatory food safety, animal and plant health standards levied from above with no EAEU-wide enforcement. To see this, consider three fundamental characteristics of the system: (1) decentralized (member state) governance, (2) limited compliance of food safety practice with international standards and (3) low level of transparency. Together, these three characteristics would seem to rule out the achievement of a single, fully comprehensive food safety area.

Box 4: EAEU policies and member state sovereignty

The EAEU Treaty employs three basic descriptions of the nature of policies within the Union: unified policy, coordinated policy and agreed policy. Each of these policies involves a different level of limitation of member state policy authority.

"Unified policy" (единая политика) means the policy implemented by the Member States in certain spheres as specified in this Treaty and envisaging the application of unified legal regulations by the Member States, including on the basis of decisions issued by Bodies of the Union within their powers. Unified policies are agreed upon at the EAEC level and announced through EAEC Decisions. Unified policy requires that member countries cede sovereignty over limited policy areas to the EAEC after consultations.

"Coordinated policy" (скоординированная политика) means policy implying cooperation between the Member States on the basis of common approaches approved within Bodies of the Union and required to achieve the objectives of the Union under this Treaty. Coordinated policy implies that member states take a common approach to a policy area, though they may employ different means.

"Agreed policy" (согласованная политика) means policy implemented by the Member States in various areas suggesting the harmonisation of legal regulations, including on the basis of decisions of the Bodies of the Union, to the extent required to achieve the objectives of the Union under this Treaty. Agreed policy represents the lowest level of limitation of member state authority insofar as it is an agreed upon policy, though one that may not necessarily lead to a unified or coordinated approach.

Source: Article 2, EAEU Treaty.

¹⁵ Customs Union Commission, December 9, 2011, Decision No. 880 "Technical Regulation of the Customs Union "On food safety" (TR CU 021/2011), EAEC TR Portal (<http://www.eurasiancommission.org/ru/act/texnreg/deptexreg/tr/Documents/TR%20TS%20PishevayaPr0d.pdf>).

Decentralized (member state) governance

This decentralized system of food safety regulation applies directly to SPS measures. In the EU, the Commission has a near exclusive right to impose temporary SPS restrictions. For goods produced in third countries these decisions are based on risk assessment information from various institutions, both independent, such as EFSA and international organizations, as well as less independent, such as the FVO, member states and the Commission itself, as to the risk to human health represented by imported foods or feeds. In the case of food traded within the borders of the Union, the Commission is the primary institution empowered to take emergency measures to restrict trade in the case of a severe risk to human health. Member states may take such actions only if the Commission does not act in such cases.

In the EAEU the situation is entirely different. The supranational authorities of the EAEU have no authority in this sphere. Each of the EAEU member states is entitled to introduce temporary SPS measures for goods produced by non-member or member countries if it receives information on potential food safety threats. When a proper risk analysis is not available, each member country is entitled to introduce immediate veterinary and sanitary measures. This implies that, for example, the government of the Russian Federation is fully able to impose temporary bans on the import of certain foods which, according to its own national assessment system, constitute threats, while other EAEU member countries may import these food items without issue. It also leads to a situation where the Russian Federation imposes bans on Belarusian meat and dairy products based on claims that these products contain listeria, antibiotics and salmonella, all of which are dangerous for human consumption (BOGUSLAVSKA, 2015).

The coexistence of different risk management authorities within the EAEU is not a temporary state of affairs. No introduction of EAEU-wide temporary SPS risk assessment or risk management institutions is contemplated. Instead, a "procedure for the interaction of food safety authorities of EAEU member states under the introduction of temporary SPS measures" should be developed by the end of 2016.¹⁶ In fact, practice shows that in the absence of such a document (and perhaps even with it) the imposition of temporary SPS measures by one country adversely affects trade flows to and from other member countries. For instance, Russia's Federal Veterinary and Phytosanitary Surveillance Service issued field instructions to its regional offices, which effectively banned the transit of goods of plant and animal origin that are subject to Russia's August 2014 import ban on third-country food imports, through the territory of the Republic of Belarus. Transit of such goods to third countries, including Kazakhstan, were allowed only through checkpoints located at the Russian part of the external border of the Customs Union (USDA-FAS, 2015).

Another example of where the EU uses supranational authority while the EAEU prefers a more decentralized approach is that of inspection and audits of country level surveillance and control systems. As noted before, in the EU the FVO conducts regular audits of country level surveillance and control systems and publishes the results and recommendations online. In the EAEU the EAEC has no authority for inspection or audit of a member state's food safety, animal and plant health system. Without such an established system of audits, there is no basis upon which to establish the equivalence of food safety control systems.

¹⁶ These plans can be found in the Work Plan for the development of regulations and international treaties pursuant to the EAEU Treaty dated May 29, 2014, approved by the Decision of the EAEC Council dated July 16, 2014 No. 58.

The recognition of food safety system equivalence would seem to be undermined by the widespread use of temporary SPS restriction measures between EAEU member countries. After all, though the Belarusian, Russian and Kazakh veterinary and sanitary control systems are assumed to be compliant, the Chief Sanitary Officer of the Russian Federation continues to find food safety threats in Belarusian food products.¹⁷

The audit situation is different for third countries. In this sphere provisions have been made for joint inspection missions composed of representatives from each of the member states. However, the usefulness of such audits for the member countries is less than might be expected. First, each member state is required to fund their own representatives, limiting the ability of the smaller member states to participate. Second, the conclusions of joint audits have only an advisory authority, meaning that each member country can accept or reject the conclusions as they see fit. The limited usefulness of such joint audits is evidenced by the extremely low participation rate of Belarusian and Kazakh experts in such audits. Out of 34 audits conducted by Rosselkhoznadzor in 2014, Kazakh and Belarusian experts took part in only 4 each.¹⁸

Limited compliance of food safety practice with international standards

The current state of compliance of food safety practice in these countries with international standards can be understood from a statement made by the former Chief Sanitary Officer of the Russian Federation G. Onishenko who noted in 2013 that the food safety parameters in EAEU technical regulations were not fully in compliance with Codex standards. He estimated the degree of compliance to be as low as 40 %.¹⁹ Use the word "indicator" or "parameter" probably means that this statement refers to microbiological limits, contaminant levels, pesticide and veterinary residue threshold levels and other such norms, rather than principles. This is probably a reasonable estimate of the current state of compliance as well, because the official approach to ensuring compliance with international standards in EAEU legislation is quite passive. Compliance is assumed unless and until a complaint is lodged by a third country.²⁰

Principles, such as animal identification and traceability, provided for in article 56 of the EAEU Treaty, have not yet been elaborated in sufficient detail to become fully operational²¹. Moreover, the provision that there should be "coordinated approaches" (soglasovannye podkhody) to these issues, rather than unified (edinye) approaches (see Box 4) raises doubts as to the degree of effectiveness that will be achieved. This may also be a reflection of the reality that it would take years of investment in the animal husbandry sector and in the food processing sector to ensure compliance with effective animal identification and traceability regimes.

¹⁷ From December 2014 Russia declared that Belarusian meat and dairy products contain listeria, antibiotics and salmonella, all of which are dangerous for human consumption (BOGUSLAVSKA, 2015). For this reason, Belarusian meat and dairy products have been the subject of import bans from the Russian Federation.

¹⁸ http://www.fsvps.ru/fsvps/news/12064.html?_language=en.

¹⁹ This estimate was made in 2013 by former Chief Sanitary Officer of the Russian Federation G. Onishenko in an article in "Nutrition Matters" magazine (No.2, 2013).

²⁰ Customs Union Commission Decision no. 625 (7 April 2011) "on ensuring harmonization of Customs Union legislation on SPS issues with international standards" and Customs Union Commission Decision no. 801 (23 September 2011) "Provision on a unified order of assessment of Customs Union legislation on the application of SPS measures."

²¹ For example, traceability requirements are not as extensive as in the EU, and limit the possibility to trace back to the primary product.

On the issue of risk assessment, the EAEU Treaty and former CU SPS international treaties did not expressly state this principle, but it was elaborated in a number of CU Commission (EAEC) regulations. According to the CU Commission Decision dated October 18, 2011 No. 835 "On the equivalence of sanitary, veterinary and phytosanitary measures and risk assessment,"

CU member states must ensure that SPS measures are based on the relevant assessment of risks to human, animal or plant life and health, subject to risk assessment methodologies, developed by the relevant international institutions.

At the same time, as of September 1, 2015, no structured risk assessment methodologies for SPS measures development and introduction have been adopted in the EAEU.

Article 6 of the WTO SPS Agreement recognizes the concepts of pest- or disease-free areas, and areas of low pest or disease prevalence. WTO members are obliged to take these pest-free regions into account when introducing temporary restrictions on imports. The World Animal Health Organization (OIE) and the International Plant Protection Convention (IPPC) have developed guidelines on regionalization and the recognition of pest – or disease – free status by importing countries, in their respective fields of action.

The EAEU Treaty and former CU SPS international treaties do not expressly refer to this principle, but it is mentioned in a number of CU Commission (EAEC) regulations. Article 13 of the Decision of the CU Commission dated October 18, 2011 No. 835 "On the equivalence of sanitary, veterinary and phytosanitary measures and on risk assessment" states that when assessing risks CU (EAEU) member states must take into account the recognition of pest- and disease-free zones. Article 10 of the "Statute on the uniform procedure applicable to joint inspections of items, subject to veterinary control and sampling of goods," approved by the Decision of the EAEC Council dated October 9, 2014 No. 94, the regionalization (zoning) principle should be used in the audit of official inspection systems of third countries. However, there are no EAEC instructions based on international standards such as ISPM No. 4, No. 8, No. 10 and No. 22; chapters 4.3 of the OIE's Code on terrestrial animals' health²² to make this obligation operational. According to the Work Plan for the development of EAEU regulations and international treaties, instructions on the regionalization procedure within the EAEU should be developed by December 31, 2015.

Low level of information transparency

The principle of transparency in the EAEU is rather limited in practice, referring only to the availability of, and consultations concerning, draft regulations. In contrast, the EU takes a more proactive approach in communicating risk issues to the public.

Use of the term "technical regulations"

In addition to the above issues, there is also an important philosophical difference between the EU and EAEU approaches to food safety. In the former Soviet Union ("FSU") legislation on both TBT and SPS measures is commonly drafted under the heading "technical regulation," though international best practice reserves such regulations for the non-food products sector. While conformity assessment and certification (supported by market surveillance) are appropriate for non-food products, current international best practice for food products

²² In accordance with the Work Plan for the development of regulations and international treaties in accordance with the EAEU Treaty dated May 29, 2014, approved by the Decision of the EAEC Council dated July 16, 2014 No. 58, by December 31, 2015 it is expected to develop the Procedure for regionalization and compartmentalization.

supports official controls at all stages of production and distribution²³, focusing on safe processes rather than mandatory certification.²⁴ The continuing prevalence of mandatory certification for food products within the domestic food safety systems of EAEU countries is a burden for food businesses that connotes a false legitimacy by the use of the term "technical regulation." This can be contrasted with the EU approach, which focuses on legislation, and administrative practices which promote safe processes (e.g., HACCP) and risk-based inspection systems.

4. ENFORCEMENT OF EU AND EAEU LEVEL LEGISLATION

Supranational regulation is of limited value without a comprehensive system of enforcement that includes regular monitoring and inspection of food business operators at the country level, as well as effective country-level food safety control systems. This section examines the provisions at the supranational level to ensure regulatory enforcement. One key issue is whether each member state is free to enforce SPS supranational legislation in whatever way and to whatever extent it chooses, or whether there exist general rules concerning the principles of enforcement, to ensure that all member states adopt a uniform approach to enforcement. A second issue is whether that uniform approach to enforcement is itself enforced by regular reviews of country-level control systems by a supranational body.

The EU prescribes in detail the approach to be taken by national authorities in enforcing SPS legislation. The provisions cover not only the competences of the national authorities, but also the actions they should undertake and the procedures and documentation they should have in place. In addition to these detailed prescriptions, the EU supranational authorities review and inspect country level control systems in order to ensure that supranational regulations are followed. In the EAEU a similar unified approach is almost entirely lacking.

European Union

As mentioned earlier in this report, in the EU a dual system operates, whereby national competent authorities enforce EU-level legislation, and the EU in turn, through the FVO, conducts oversight and inspection of the operation of national authorities by undertaking audits. Article 45(1) of Reg. 882/2004 sets out the legislative basis:

Commission experts shall carry out general and specific audits in Member States. The Commission may appoint experts from Member States to assist its own experts. General and specific audits shall be organized in cooperation with Member States' competent authorities.

Audits shall be carried out on a regular basis. Their main purpose shall be to verify that, overall, official controls take place in Member States in accordance with the multi-annual national control plans referred to in Article 41 and in compliance with Community law. For this purpose, and in order to facilitate the efficiency and effectiveness of the audits, the Commission may, in advance of carrying out such audits, request that the Member States provide, as soon as possible, up-to-date copies of national control plans.

²³ CODEX ALIMENTARIUS (1995) guidelines state: "Inspection of food may occur at any stage in the production and distribution process."

²⁴ Of course, certification has a role to play particularly in cross-border trade.

As a general point, one should state that the primary instruments of enforcement of EU legislation are not EU institutions. The primary enforcement agencies are at the country level. However, the EU is engaged in overseeing the work of the national enforcement bodies. In other words, the EU ensures that national bodies have multi-annual national control plans, and that these plans are appropriate to ensure a high level of food safety.

Regulation 882/2004 also sets out the basic obligation of the national administrations: to "ensure that official controls are carried out regularly, on a risk basis and with appropriate frequency". Other key principles concerning official controls include:

No prior warning. Controls are to be carried out without prior warning.

All stages of production. Controls are to be carried out at all stages of production, processing and distribution of feed or food and of animals and animal products.

Imports and exports. Controls are to be applied to imports and exports alike.

Clear responsibility for control. Each Member State is to designate the competent authorities to be responsible for the official controls.

Control authorities to have adequate resources. Competent authorities to ensure they have sufficient, trained, qualified and experienced staff (a list of subject matter to be covered in the training of staff is included in Annex II of the Regulation), adequate laboratory capacity and other facilities and equipment, legal powers to implement controls under the Regulation and emergency plans.

Impartiality of controls. Member States shall ensure that official controls are impartial and consistent at all levels. Where implementation is delegated (e.g. at regional/local levels) or split between different agencies, there shall be effective coordination and cooperation.

Accreditation. Control bodies have to work and be accredited in accordance with EN 45004 ("General criteria for the operation of various types of bodies performing inspection").

Mandatory audits of control bodies. Competent authorities are to arrange inspections or audits of control bodies as necessary, and to have procedures to verify the effectiveness of the official controls.

Activities of official controls. The Regulation also gives a list of the activities of official controls, which include examining food business operators' internal control systems; inspecting premises, equipment, raw materials, ingredients, semi-finished products, materials in contact with food, cleaning and maintenance products and processes, labelling, presentation and advertising; checking hygiene conditions, assessing procedures of good manufacturing practices (GMP), good hygiene practices, good farming practices and HACCP; examining written material and other records; interviewing staff; and checking measurements made, if necessary by using their own instruments to verify.

The Regulation also deals with issues such as sampling and analysis, official laboratories, crisis management, national control plans, imports and exports.

As regards enforcement measures, the Regulation permits a range of actions including but not limited to

- a. the imposition of sanitation procedures,
- b. Restriction or prohibition of the placing on the market, import or export of feed, food or animals,

- c. Monitoring and if necessary ordering the recall, withdrawal and/or destruction of feed or food,
- d. Suspension of operation or closure of all or part of a business for an appropriate period of time, and
- e. Suspension or withdrawal of an establishment's approval.

Also important to note is the list of "subject areas for control procedures" in Annex II. This is a list of issues which need to be covered in any operations manual adopted by a competent authority. Items include the organisation of the competent authority and the relationship between central competent authorities and authorities to which they have delegated tasks to carry out official controls; the relationship between competent authorities and control bodies to which they have delegated tasks related to official controls; a statement on the objectives to be achieved; tasks, responsibilities and duties of staff; sampling procedures, control methods and techniques, interpretation of results and consequent decisions; monitoring and surveillance programmes; mutual assistance in the event that official controls require more than one Member State to take action; actions to be taken following official controls; cooperation with other services or departments that may have relevant responsibilities; verification of the appropriateness of methods of sampling, methods of analysis and detection tests; and any other activity or information required for the effective functioning of the official controls.

It should be added that the EU applies a similar approach as regards imports. It expects importing countries to have appropriate national controls in place, and it regularly conducts audits of the national authorities in importing countries in order to check that the controls are sufficient. This is set out in article 46 of Reg. 882/2004.

Thus, in conclusion, the EU has a highly-developed dual system to ensure the application of EU legislation in all the member states and to ensure the existence of equivalent measures in respect of third countries exporting to the EU.

Eurasian Economic Union

As can be seen from Table 4, there are serious gaps in the EAEU's approach to regulation of the national enforcement of SPS provisions.

Table 4: EU and EAEU enforcement measures: Does supranational legislation prescribe certain enforcement principles?

Measure	European Union	Eurasian Economic Union
Supranational audit system is in place	Yes. Reg. 882/2004	Only regarding veterinary inspection system. (Statute on the uniform procedure applicable to joint inspections of items, subject to veterinary control and sampling of goods) ²⁵
National control plans are mandatory	Yes. Reg. 882/2004	No
National controls are to be carried out without prior warning	Yes. Reg. 882/2004	No.
Are all sectors (including imports and exports) covered?	Yes. Reg. 882/2004	Yes. 1.Treaty on the Eurasian Economic Union. 2. Acts of: <ul style="list-style-type: none">• EAEU Supreme Council; Eurasian Intergovernmental Council;• Eurasian Economic Commission
Is it mandatory to have sufficient qualified staff and laboratory capacity?	Yes. Reg. 882/2004	Yes. 1.Treaty on the Eurasian Economic Union. 2. Technical Regulation "On food products safety" (TR CU 021/2011).
Do national controls have to be impartial and consistent?	Yes. Reg. 882/2004	No ²⁶
Should enforcement measures include...	Yes. Reg. 882/2004	No. Regulated at Country level
Improvement orders	Yes. Reg. 882/2004	No. Regulated at Country level
Prohibition to place food on the market	Yes. Reg. 882/2004	No. Regulated at Country level
Ordering recall/withdrawal and/or destruction of unsafe food	Yes. Reg. 882/2004	No. Regulated at Country level
Suspension/closure of business	Yes. Reg. 882/2004	No. Regulated at Country level

Source: Reg. 882/2004, EAEU Treaty, TR CU 021/2011.

²⁵ EAEC Council decision no. 94, dated 9 October, 2014. This provides for audits of third country control systems and inspections of third country enterprises, as well as for inspection of member state enterprises, but does not provide for audits of member states' control systems.

²⁶ As a rule, national legislation in the member states provides that national controls should be impartial and consistent, but currently there is no EAEU document specifying this, though it is planned to adopt EAEU legislation regulating national control systems.

State inspections of the EAEU (CU) technical regulations compliance and application are governed by the national legislations of the EAEU member states. In the longer term, it is contemplated that an international treaty "On the principles of, and approaches to the harmonization of legislation in the sphere of state control (inspection) of compliance with the EAEU technical regulations requirements" will be developed in the EAEU.

At present, however, EAEU-level regulation of how the member states enforce compliance is extremely limited. There is almost no harmonisation of the operational principles of national control systems. Whilst EAEU-level legislation requires national control systems to have sufficient qualified staff and laboratory capacity, it does not set out provisions concerning inspection procedures, enforcement measures or annual/multi-annual control plans. Thus there is no guarantee that the member states are adopting a risk-based approach to ensure that controls are effective.

Further, the supranational audit system is largely lacking. Therefore the EAEU is unable to check whether the member states are in compliance with its provisions concerning national control systems. The supranational audit system is more active when assessing compliance in third countries, but it is led by Russian Federation experts and does not have a common budget²⁷.

5. HARMONIZATION OF EU AND EAEU LEGISLATION WITH INTERNATIONAL STANDARDS

Harmonization of legislation with international standards has two important aspects. First, Codex Alimentarius, the OIE and the IPPC have developed scientifically based standards, such as microbiological limits, contaminant levels, pesticide and veterinary residue threshold levels and more. The WTO SPS Agreement points to these as science-based international standards consistent with the aim of a level of food safety necessary to protect human, animal or plant life or health without being restrictions on international trade. However, adherence to international standards is more than *participation* in Codex, IPPC and OIE activities, or even the *inclusion* of Codex contaminant levels (for example) in legislation. The main task of harmonization with international standards is the introduction of workable risk assessment and management best practices, HACCP hygiene control systems, farm-to-fork approaches to food safety and other food safety principles into member country legislation and institutions. In this respect, the efforts to separate risk assessment from agricultural economic interests and member country politics in Europe is a good example of a reform capable of assisting member countries to bring their SPS systems into compliance with international standards (HOFFMAN and HARDER, 2010).

While the EAEU has progressed on the task of adapting its legislation to international standards in the first sense, the previous two sections have argued that it faces significant obstacles on adapting its SPS system to international standards in the second sense.

European Union

The reform of the food safety system in the EU after the EC White Paper altered the manner in which international food safety, animal and plant health standards are introduced and

²⁷ Annex 12 of the EAEU Treaty includes a provision in clause 12 as follows: "The costs associated with the conduct of audit of foreign official supervision systems and joint audits (inspections) shall be funded from the respective budgets of the Member States, unless another procedure is agreed on a case-by-case basis."

implemented within the EU. The EU supranational institutions take a leading role in coordinating harmonisation of SPS measures and in the work of developing new regulations with those international bodies. Thus the work of individual members is very limited, both on the risk assessment and research side, where EFSA plays a role, and on the risk management and policy side, where individual members do not have the freedom to adopt separate policy positions.

As noted from information provided by the EU:

All EU countries are members of the Codex Alimentarius Commission. In 2003, the EU also joined, sharing competence with EU countries depending on the level of harmonisation of the respective legislation. Decision 2003/822/EC describes relevant working procedures and constitutes a legal basis for accession of the EU to Codex. The Directorate-General Health & Food Safety is the EU Codex contact point.²⁸

Further, the EFSA, according to its own information, plays an active part both in advising the Commission on Codex Alimentarius issues as well as participating in Codex meetings and contributing to technical discussions "on the principles of risk analysis and on biotechnology".²⁹

The EU, while not an actual member of the OIE, has formal observer status, on the basis of an exchange of letters in 2004. All 28 member states are members of the OIE. The Commission coordinates the position of the member states to ensure a unified approach at OIE discussions. It is evident from a perusal of the relevant EU website³⁰ that the Commission has been very active over the last 13 years, preparing almost 100 common position papers during that time. Furthermore, the EU is currently cooperating closely with the OIE to promote good practices in animal welfare across the world³¹.

All EU member states are members of the IPPC, and the EU acceded to the IPPC by virtue of a Council Decision dated 19th July 2004.

It is notable that EU legislation in the SPS sector frequently refers to the relevant international organisations and to standards and guidelines issued by them. For example, Directive 2000/29 EC³² makes frequent references to IPPC, and the model phytosanitary certificates in Annex VII to the Directive are based on IPPC-approved standards. Similarly, EU horizontal legislation on food hygiene (Regulation 852/2004), microbiological criteria (Regulation 2073/2005), contaminants (Regulation 1881/2006), veterinary medicine residues (Regulation 470/2009) and pesticide residues (Regulation 396/2005) all make frequent reference to Codex standards.

²⁸ http://ec.europa.eu/food/safety/international_affairs/standard_setting_bodies/codex/index_en.htm.

²⁹ <http://www.efsa.europa.eu/en/international/codex>.

³⁰ http://ec.europa.eu/food/safety/international_affairs/standard_setting_bodies/oie/eu-comments_en.htm.

³¹ http://ec.europa.eu/food/animals/welfare/international/index_en.htm.

³² "On protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community".

Table 5: SPS harmonization activity: Participation in Codex Alimentarius, OIE and IPPC

International body	European Union		Eurasian Economic Union	
	Supranational	Country-level	Supranational	Country-level
Codex Alimentarius	Decision 2003/822/EC D-G Health and Food Safety	Yes	Observer status	Yes.
OIE	Observer status since 2004	Yes	Cooperation agreement, but no status	Yes.
IPPC	Council Decision to accede, 2004	Yes	No	Yes.

Source: Websites of the CODEX ALIMENTARIUS, OIE and IPPC; EC Decision 2003/822/EC.

Eurasian Economic Union

Cooperation between the EAEU and Codex, OIE and IPPC is not yet very effective. The EAEU Supreme Council recently adopted a decision³³ to develop cooperation with a large range of international organisations, including the three named above. However, given the large number of organisations listed in that decision, together with the short time span of less than 2 years, it seems unrealistic that much will be achieved. The EAEU, through the EAEC, has observer status with Codex, but does not have membership or observer status with the other two bodies, although the EAEC signed a cooperation agreement with the OIE on January 10, 2014. Effectively, therefore, it is the member states, led by Russia, which play a more active role. It is likely, therefore, that the process of incorporation of international standards into EAEU legislation is mainly through the participation of Russian professionals³⁴. As yet, there is not much evidence of the influence of those standards. For example, TR 021/2011 ("On food safety") makes several references to OIE requirements but no reference to Codex or IPPC, although the EAEU emphasizes its aspiration to adhere to the international standards, guidelines and recommendations of all three of these standard setting bodies.

During the WTO accession process Russia and Kazakhstan assumed the commitment that all SPS measures, technical regulations, standards and compliance assessment procedures developed, adopted and applied in the EAEU will be based on international standards. Notwithstanding these commitments, the adopted EAEC regulations for the harmonization of CU SPS legal instruments with international standards suggest that there have not been systematic efforts to ensure harmonization with international standards. There are very few references to international standards in EAEC regulations. Second, the EAEC publishes no publicly available summary reports on the harmonization of SPS measures with international standards. At the same time, a review of EAEU regulations enables us to make certain conclusions:

³³ Decision no. 26 dated 15 October 2015 "On the main directions of international activity of the EAEU in the period 2015-2016".

³⁴ It is notable also that the EAEC consultative committee for technical regulation and implementation of sanitary, veterinary and phytosanitary measures consists of 6 representatives from Belarus, 8 from Kazakhstan and 10 from the Russian Federation.

First, the EAEU uniform veterinary requirements are adopted based on OIE Codes, and some contain direct references to them. However, EAEU member states do not perform or insufficiently perform a number of important requirements, such as animal identification, zoning and compartmentalization, establishment and operation of statutory authorities, ensuring laboratory monitoring of banned and harmful substances residuals in live animals etc.

Second, the rate of harmonization of the EAEU sanitary requirements and technical regulations for food ingredients and products with the international standards of Codex Alimentarius constitutes approximately 40 %.

Third, plant quarantine systems applied in the EAEU states do not comply with international ISPM standards at this time, though they have now commenced fundamental reforms in the area of plant quarantine and protection in an effort to ensure consistency with IPPC principles.

In conclusion, currently the member states of the EAEU are more active than the EAEC in their bilateral relations with these three international organisations.

B. THE FOOD SAFETY SYSTEM AT THE COUNTRY LEVEL

In both the EU and the EAEU actual monitoring and enforcement of food safety regulations related to food business operators is the responsibility of country level authorities. This section, therefore, considers three critical issues pertaining to the institutions of food safety control within EU and EAEU member countries. First, it describes the legislation and country-level institutions as well as the division of responsibilities concerning national controls in two member countries of the EU and EAEU. For the EU, the legislation and institutions of the United Kingdom are analysed, while for the EAEU the Republic of Kyrgyzstan institutions are analysed. Second, this chapter analyses the changes in food safety legislation and institutions mandated by accession to each of the two economic unions. For the EU, the example of Croatia is analysed, and for the EAEU the cases of Kyrgyzstan and Armenia are examined. The third section of this chapter compares the effectiveness of supranational legislation at the country level in the two unions based on the analysis of the first two sections.

We find that there are major differences in these three aspects of food safety systems in countries of the EU and EAEU. First, the roles and responsibilities of country-level institutions, while relatively clear in the EU countries, are not well defined or well understood in the countries of the EAEU. This is partly a consequence of clearly stated principles, protocols, procedures and plans mandated by EU institutions, complemented with a system of enforcement to ensure implementation. While the EU does not prescribe the institutional structure of the food safety assurance system at the country level, the practice of clearly stated mandatory principles and procedures with enforcement provides for a high level of food safety. While the EAEU Treaty mentions a number of important food safety and SPS principles, the lack of detailed procedures, adequate enforcement mechanisms, training and resources has the effect of leaving countries to their own devices.

This laissez-faire attitude is evident in the accession process within the two Unions. Based on our review of the case of Croatia, the EU accession process on SPS issues is a transformative process requiring a decade or more of capacity building and preparation. Based on our review of the accession processes in Kyrgyzstan and Armenia, accession to the EAEU is primarily political, with few actual changes and little capacity building. The accession of Kyrgyzstan may seem to belie this general judgment. During accession there was a genuine concern about the SPS control system in Kyrgyzstan, culminating in an unprecedented call for audits of the system of veterinary, phytosanitary and public health control in the country. While there has certainly been concern, there is no evidence that lasting substantial changes have been made in the veterinary, phytosanitary and public health control systems in Kyrgyzstan as a result of the accession process.

An effective national control system is one in which the system is comprehensive, risk-based, adequately resourced and responsive. In the EU, the role of EU-level institutions, such as the European Commission, the FVO and the EFSA, are critical to ensuring that the principles and procedures of food safety control are adequately explained, enforced and resourced. In the EAEU, the lack of Union-wide rules concerning the system of national controls means that there is no guarantee of coherence or comprehensiveness – as evidenced by the rather complicated situation in the Kyrgyz Republic. Moreover, in EAEU countries, decisions on the principles, strategies, structure and resources for food safety control are left to the country to decide. Ultimately, this leads to a lack of clarity, inconsistency and capacity constraints that is incapable of guaranteeing effective national control systems.

1. COUNTRY LEVEL LEGISLATION AND INSTITUTIONS

European Union: United Kingdom

In each of the EU member states it is the responsibility of the legislative branch to adopt legislation based on EU rules. Whilst EU Regulations have automatic effect in the member countries, EU Directives need to be transposed into national legislation. Thus, in the UK, Parliament adopts national legislation related to EU Directives. The EU does not prescribe a particular institutional set-up. It does not, for example, insist that each member state should have a single agency for food safety. Thus practice varies considerably between the different member states as to which ministries and other agencies have obligations as regards development and enforcement of SPS measures. In the UK, the competent central authorities are the Department for Environment, Food and Rural Affairs (DEFRA) and the Food Standards Agency (FSA).

National legislation

In the UK, the legislation setting out the functions of the various institutions responsible for activities in relation to SPS measures is set out in a range of legislative acts.

Main legislation. The Food Safety Act 1990 (subsequently amended) provides the framework for all food safety legislation in the UK. The General Food Regulations 2004 provided for enforcement of certain aspects of the EU Regulation 178/2002 and amended the Food Safety Act 1990 to bring it in line with EU legislation.

Food Standards Agency. The Food Standards Act 1999 established the Food Standards Agency and defined its powers, which are:³⁵

- Policy development
- Provision of advice and guidance
- Monitoring of enforcement, observation and acquisition of information

The Food Standards Act 1999 also provides for the appointment of key staff in the Agency, establishment of advisory committees and the reporting obligations of the Agency.

Local authority powers. In the UK, the powers of local authorities to enforce SPS measures stem from a mixture of legislation, some of which focuses on specific sectors and enforcement or monitoring measures, and some of which is more general legislation setting out the powers of local authorities across a range of sectors. Relevant legislation includes:

- Food Safety and Hygiene (England) Regulations 2013
- Local Government Act 1985
- Public Health (Control of Disease) Act 1984
- Public Health Act 1936

Competences of national authorities

The Department for the Environment Food and Rural Affairs ("DEFRA") is the Central Competent Authority responsible for animal health and welfare law in England and is responsible for policy and regulations on environmental, food and rural issues. In addition, DEFRA has overall

³⁵ As a result of devolution, its role is now shared with the sister agency Food Standards Scotland ("FSS"), which was established in April 2015.

responsibility for plant health law. The Devolved Administrations (in Wales, Scotland and Northern Ireland) are the competent authorities for their countries with regard to animal health and welfare and plant health law.

Responsibilities for official controls are divided in a rather complicated way. Essentially, the division is between central authorities which are responsible for control of high-risk issues, with local authorities handling the responsibility of conducting routine inspections of catering and retail establishments. For example, activities of the central authorities include:

(a) FSA and agencies on its behalf undertake the following official controls:

- Approval of fresh meat establishments
- Fresh meat hygiene controls
- Hygiene controls in milk production holdings (England and Wales only)
- Hygiene controls in egg production units
- Specified Risk Material and other Transmissible Spongiform Encephalopathy controls in approved slaughterhouses and cutting plants
- Bovine Spongiform Encephalopathy (BSE) testing (on behalf of DEFRA)

(b) The Veterinary Medicines Directive carries out veterinary medicine drug residue surveillance.

(c) The Rural Payments Agency carries out beef labelling for England and Wales.

(d) The Health and Safety Executive (Chemicals Regulation Directorate) carries out pesticide residue monitoring and enforcement.

The role of local authorities should not be underestimated. They are involved in implementing official controls at all stages of food and feed production, processing and distribution. In particular, they enforce EU hygiene legislation. This requires considerable expertise: not only knowledge of the substantive legislation, but also planning and analytical ability. As noted in the UK's Multi-annual national control plan (April 2013-March 2016³⁶):

"Each individual authority's planned control activities are set out in its service delivery plan. This includes:

- the number of premises inspections/interventions programmed, an estimation of the number of revisits needed, and any targeted inspection activity that the authority intends to carry out;
- an estimation, based on previous year's trends, of the likely demand on the service for dealing with complaints;
- an estimate of the resource needed for businesses for which it acts as the Primary or Home Authority or originating authority, and responding to enforcing authority enquiries;
- an estimation of the number of contacts from businesses regarding the provision of advice;

³⁶ FOOD STANDARDS AGENCY et al. (2013): "Multi-annual national control plan (April 2013-March 2016)". www.food.gov.uk (https://www.food.gov.uk/sites/default/files/mancp-uk_0.pdf).

- details of sampling programmes and an estimate of the number of samples that may be taken in relation to complaints; and
- an estimation, based on previous year's trends, of the likely demand on the service in dealing with control and investigation of outbreaks and food related infectious disease."

Eurasian Economic Union: Kyrgyz Republic

In the EU it is clear that, in the SPS sphere, legislative initiative belongs wholly to supranational institutions. National parliaments, insofar as they adopt SPS regulations, only do so when transposing EU Directives into national legislation. In the EAEU, however, there is not a strict division as regards legislative initiatives. The member states' individual legislation may prevail where there are gaps in the EAEU legislative coverage of SPS issues. Therefore, in addition to ensuring that national legislation is harmonized with the EAEU Treaty and decisions issued by the EAEU Supreme Council and the EAEC, national parliaments also have some freedom to adopt legislation – for example as regards particular foodstuffs where the EAEU has not yet adopted technical regulations. Further, as the EAEU has not yet adopted provisions concerning the principles of enforcement, there are no supranational rules regarding the structure or division of competences between the national control agencies.

The Kyrgyz Republic is fairly typical of post-Soviet states as regards the range of institutions that function within the SPS system. Whilst there is a division between sanitary measures under the Ministry of Health and phytosanitary and veterinary measures under a separate agency, it is worth noting that the latter body works directly under the Government rather than through the Ministry of Agriculture.

Competences of national authorities

The Government participates in SPS regulation policy through its representatives in the EAEC Council and Collegium when drafting and approving EAEU technical regulations. Technical regulations establish the rules applicable to state inspection, as well as procedures for veterinary and sanitary evaluation of unprocessed food and animal products subject to EAEU technical regulations. Technical regulations also define the food products and production facilities subject to EAEU-mandated state registration, and may establish additional sanitary, veterinary and phytosanitary requirements for food products in selected member countries.

The Ministry of Economy is the competent technical regulation authority. Its functions include coordinating the activities carried out by state authorities and other stakeholders of the technical regulation system in the Kyrgyz Republic, as well as ensuring fulfilment of the obligations assumed by the Kyrgyz Republic under the WTO TBT Agreement. It also establishes and maintains the national portion of the EAEU uniform registry of compliant producers as part of its obligations under EAEU technical regulations, and maintains the national portion of the uniform registry of EAEU-compliant assessment authorities (testing laboratories).

The Department for Sanitary and Epidemiological Surveillance of the Ministry of Health operates the state inspection services tasked with assessing compliance with the sanitary requirements of EAEU technical regulations. This includes the registration of specialized food products, new types of food products, and food and feed additives in accordance with EAEU technical regulations "On food safety" and other "vertical" EAEU technical regulations. It also includes the establishment and maintenance of the national portion of the uniform registry for specialized food products, new types of food products, and food additives under EAEU technical regulations "On food products" and other "vertical" EAEU technical regulations.

The State Inspectorate for Veterinary and Phytosanitary Safety under the Government of the Kyrgyz Republic operates state inspection services tasked with assessing compliance with veterinary and phytosanitary articles of EAEU technical regulations. It also keeps a state registry of production facilities and maintains the national portion of a registry of EAEU-compliant producers according to the EAEU technical regulation "On food safety".

The Kyrgyz Standardization and Metrology Center under the Ministry of Economy is the national standardization authority. It approves the national standards of the Kyrgyz Republic, makes decisions on the use of interstate (GOST) and international standards within the territory of the Kyrgyz Republic, represents the Kyrgyz Republic in international and regional standardization organizations.

The Kyrgyz Accreditation Centre under the Ministry of Economy establishes accreditation rules for compliance assessment authorities (certification authorities; testing laboratories; control authorities), implements the accreditation of compliance assessment authorities, represents the Kyrgyz Republic in international and regional accreditation organizations (is a member of ILAC), establishes and maintains the national component of the EAEU uniform registry of compliance assessment authorities.

Accredited laboratories included in the EAEU uniform registry test products with a view to accepting the EAEU uniform compliance declaration and issuing EAEU uniform state registration certificates for specialized food products, new types of products and food additives.

The State inspectorate for veterinary and phytosanitary safety under the Government of the Kyrgyz Republic is the competent plant quarantine authority of the Kyrgyz Republic as of 1 September 2015.³⁷

The key obligations related to veterinary and sanitary measures public regulation are distributed between the *Ministry of Agriculture and Amelioration* and the *State veterinary and phytosanitary safety inspectorate*. As of September 1, 2015: (i) veterinary control matters are vested in the State veterinary and phytosanitary safety inspectorate under the Government of the Kyrgyz Republic, (ii) certain powers pertaining to the development and implementation of veterinary policy, public regulation of veterinary medicine sales and maintenance of the state registry, analysis of veterinary and sanitary risks are vested in the Ministry of Agriculture. At the same time, as of September 1, 2015 neither the ministry nor the agency has been formally granted the functions of the competent veterinary authority, as required by the provisions of the EAEU regulations and the Law of the Kyrgyz Republic "On veterinary issues"³⁸.

The Department for Disease Prevention and State Sanitary Epidemiological Supervision of Ministry of Health of the Kyrgyz Republic is the state authority responsible for public health (sanitary) regulation.³⁹ The fundamental regulation of the Kyrgyz Republic in the area of public health (sanitary) regulation is the Law "On public health"⁴⁰. According to this Law, hygiene requirements for the manufacture of ingredients for food products and for finished food products are established by technical regulations.

³⁷ Decree of the Government of the Kyrgyz Republic dated May 7, 2013 No. 256.

³⁸ Jogorku Kenesh (Parliament of Kyrgyz Republic), December 30, 2014, No.175, Law "On veterinary".

³⁹ Kyrgyz Republic Government, February 20, 2012, Resolution No. 118, "On the Ministry of Heath of the Kyrgyz Republic".

⁴⁰ Jogorku Kenesh (Parliament of Kyrgyz Republic), July 24, 2009, No. 248, "Law "On public health".

National legislation

At the EAEU level there are no enforcement or coordination authorities pertaining to actions taken at the country level to ensure compliance with EAEU SPS measures and technical regulations. In lieu of EAEU-level enforcement, EAEU members are entitled to issue national legislation and take actions to regulate the application of SPS measures and technical regulations. National legislation and actions may take the following forms:

- (a) *Laws governing specific areas of the application of SPS measures not governed by EAEU regulations.* All EAEU member states have issued laws on veterinary issues, plant quarantine, public health (sanitary) issues, food safety (excepting Kyrgyzstan) and state inspection. Though issued by member states, these laws must not conflict with the EAEU Treaty or with other acts of the EAEC.
- (b) *Laws adopted for the implementation of the EAEU Treaty and other acts of the EAEC.* In accordance with the Technical Regulation "On food safety," unprocessed raw food of animal origin (e.g., raw milk) is subject to veterinary and sanitary examination before delivery to the market. Veterinary-sanitary examination is to be carried out in accordance with the national law of the member state of the EAEU. Member states of the EAEU take different institutional approaches to this task. In Belarus, for example, veterinary and sanitary inspection is performed only by public institutions, while in Kazakhstan and Kyrgyzstan independent accredited veterinary laboratories are given the right to inspection. Moreover, in Kyrgyzstan, as of October 1, 2015, there are no regulations on veterinary-sanitary inspection, a situation that increases the risk of dangerous products being placed on the market. This omission is a significant obstacle to trade with partners in the EAEU.
- (c) *Laws specifying additional SPS requirements in addition to those mandated by the EAEU.* According to the EAEU Treaty, member states may introduce additional SPS requirements aimed at attaining a more rigorous level of food safety, subject to the condition that such measures are justified based on risk analysis.
- (d) *Regulations specifying temporary SPS measures regarding goods produced in other member states or by third countries.* Under the EAEU Treaty all member states have the right to apply temporary SPS measures as a precautionary measure upon discovery of a food safety threat when there is inadequate information to conduct a comprehensive risk assessment.
- (e) *Veterinary measures on animal identification and traceability of products of animal origin, regionalization and compartmentalization.* Veterinary measures on animal identification and traceability of products of animal origin, regionalization and compartmentalization are regulated by national legislation of member states and implemented by the authorized bodies of veterinary medicine. The role of the EAEC in these cases is to establish in 2016 "Regulations on the harmonized approach for the identification, registration and traceability of animals and products of animal origin."
- (f) *Participation in common EAEU veterinary audits.* The EAEC does not have its own budget for financing member states' common activities, including audits of veterinary objects either within the EAEU or in third countries. That is, each member state decides whether to participate in such activities and funds them themselves. In Kyrgyzstan, for example, there is practically no budget for laboratory or inspection of monitoring of SPS objects within the country. Participation in common EAEU veterinary audits outside of the country are thus highly unlikely.

(g) *Corruption.* Finally, it has to be recognized that, compared to the average EU member state, corruption risks are higher in the public administration in the post-Soviet countries, and this has an impact on the consistency of enforcement of SPS measures.

2. CHANGES IN SANITARY AND PHYTOSANITARY CONTROL UNDER ACCESSION: EU AND EAEU

The process of accession to an economic union is very revealing of the importance of the role of rules (law and institutions) vs. discretion (manual control by government officials) in the governance of the Union. This section examines the process of accession of new member states, taking the examples of Croatia (EU), Kyrgyz Republic and Armenia (EAEU) and focusing on the time periods and legal and administrative reforms involved.

The accession process varies considerably between the two Unions. In both cases legislative changes were necessary. However, in Croatia's case, the process also involved detailed administrative reforms – and even a change in mentality – over a period of many years, whereas in the Kyrgyz Republic and Armenia the changes were much more superficial. Armenia's case is striking in that the whole process took little more than a year (see Table 6 below), leaving gaps in legislative reform and information provision.

EU: The example of Croatia's accession

"Acquis communautaire" is the term given to the complete body of European Union law – comprising legislation, legal acts and court decisions. The exact total number of documents is unknown, but one source⁴¹ estimates it to be over 130,000, including 40,000 legislative acts. Applicants to join the EU must harmonise their legislation through a process of transposition of EU legal acts into national legislation. The process of accession to the EU is a long one, and the *acquis communautaire* is divided into chapters to aid the process of analysing what actions are required to be completed by the applicant country before it can formally join the Union. When Croatia applied to join the EU, the *acquis* consisted of 35 chapters, chapter no. 12 being "food safety, veterinary and phytosanitary policy". Croatia's negotiations to join the EU lasted 10 years (2001-2011), and negotiations over chapter 12 opened in 2003 and took 7 years to complete.

Whilst the large volume of legislation to be adopted is one concern, arguably a greater issue is increasing national capacity. A 2012 account of Croatia's accession process noted:

"The (lack of) administrative capacity issue was repeatedly reported by the EU as an area Croatia needed to improve in order to carry out inspection and control of food products, including provision of appropriate laboratory capacities."⁴²

The process of negotiations over chapter 12 involved numerous steps, including:

- completing an extremely detailed questionnaire,
- receiving feedback from the EU on the existing degree of harmonisation and areas requiring further reform,
- the development of a comprehensive "National Food Safety Strategy",

⁴¹ <http://en.euabc.com/word/2152>.

⁴² "EU Accession Guidelines: Sharing Croatia's Experience – Chapter 12: Food Safety", pp. 8-9, accessed from: https://www.academia.edu/5979053/EU_Accession_Guidelines_-_Sharing_Croatias_Experience_-_Chapter_12_-_Food_Safety.

- the adoption of a political decision on which body would be appointed the competent authority,
- initial meetings in Brussels to understand all aspects of the food safety acquis,
- preparing a transposition table which analysed the differences between Croatian and EU legislation and the steps required to achieve harmonisation,
- receiving a "Screening Report" from the EU which set out all the actions required,
- agreeing on the benchmarks, achievement of which is required to formally open and subsequently complete the Chapter,
- agreeing on transitional periods,
- reorganising the system of official controls, including hiring and training extra personnel.

One of the most difficult aspects of compliance with the Acquis in the area of food safety, veterinary and phytosanitary policy was upgrading food production facilities in the meat and dairy sectors, as there was considerable resistance to the changes, and many producers hoped for unrealistically long transition periods. The entire process was assisted through EU technical assistance projects and pre-accession financial assistance.

Jelena Đugum, Director of the Food Safety Administration in the Croatian Ministry of Agriculture, Fishery and Rural Development, summarized the experience of completing chapter 12 in a way that expresses the importance of the accession process above and beyond legislative compliance: "Through this process we developed a system and a way of thinking not just within the ministry but also with consumers, businesses etc.; the way of thinking about food changed. And I would say that we needed the EU process in order to change our way of thinking about food safety."⁴³

Table 6: Accession process to EU/EAEU: How much time is required for new members to accede?

Timeline	Croatia	Kyrgyz Republic	Armenia
Date of declaration to accede	2001	April 2011	September 2013
Date of formal accession	2011	August 2015	January 2015
Time lapse	10 years	4 years	16 months

EAEU: The example of Kyrgyz Republic's accession

Preparation for the accession of the Kyrgyz Republic to the EAEU was held based on a "Roadmap for Accession to the Customs Union," approved by the Decision of the EAEU Supreme Council dated May 29, 2014⁴⁴. Seven months later, on 23 December 2014, the Treaty on accession of the Kyrgyz Republic to the EAEU was signed at the session of the Supreme Eurasian Economic Council. On 8 May 2015 at another session of the Supreme Eurasian Economic Council, the heads of the EAEU Member States endorsed two protocols in which

⁴³ IBID, p. 35

⁴⁴ EAEU Supreme Council, May 29, 2014, Decision No. 74, "On the action plan ('road-map') for accession of the Kyrgyz Republic to the Customs Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation", EAEC Law Portal (https://docs.eaeunion.org/docs/en-us/0143439/err_30052014_74).

the terms, conditions and specific features of the accession of Kyrgyzstan to the EAEU were defined. The Kyrgyz Republic was admitted to the EAEU on 12 August 2015.

Since 12 August 2015, EAEU regulations pertaining to the application of SPS measures are in force within the territory of the republic. However, as of 1 May 2016 matters of SPS control of commodities at the Kyrgyz-Kazakh section of the state border remained unsettled pending the results of joint EAEU audits of the state public health (sanitary), veterinary and phytosanitary control systems. In accordance with the Decision of the Supreme Eurasian Economic Council (8 May 2015)⁴⁵

- (i) sanitary control will be cancelled following a review by EAEC staff and competent authorities of EAEU member states of the sanitary control system of the Kyrgyz Republic,
- (ii) veterinary and phytosanitary controls will be cancelled starting with the date of an EAEC Council decision approving the results of the veterinary and phytosanitary control system assessment in the Kyrgyz Republic⁴⁶.

The weaknesses of the Kyrgyz SPS control system have also been emphasized by the WTO Secretariat.⁴⁷ A 2013 "Trade policy review - Kyrgyz Republic"⁴⁸ highlighted frequent changes in the direction of policies and institutions pertaining to SPS measures, noting that there seems to be no clear strategy for the building of a stable and effective system of SPS control. The report identified inconsistencies with internationally recognized norms and with the WTO SPS Agreement. For example, the Government did not have a working WTO Inquiry Point for a long time.⁴⁹

EAEU: The example of Armenia's accession

The declaration by the President of Armenia on 3 September 2013 that the country would join the EAEU was quite unexpected. Prior to that, the government had been preparing for some years to sign a Deep and Comprehensive Free Trade Agreement with the European Union, and to that end had embarked on a reform process that included revision of food safety legislation and a review of its national food safety and quality infrastructure. Instead, after September 2013 the country quickly changed its course and began preparations to join the EAEU. Armenia formally became a member on 2 January 2015.

The rush to complete negotiations resulted in a lack of readiness for the change and a resulting lack of information. Initial documents uploaded to legislative databases were often incomplete and/or only in Russian language. It was not until 30 October 2014 that the government adopted a number of resolutions governing rules and procedures for the import and export of a range of food products, and subsequently provided some explanations⁵⁰ to the business community concerning the impact of accession to the EAEU.

⁴⁵ EAEU Supreme Council, May 8, 2015, Decision No. 6, "On abolition of quarantine, veterinary and sanitary and phytosanitary quarantine control (supervision) at the Kyrgyz-Kazakhstan section of the state border", EAEC Law Portal (https://docs.eaeunion.org/docs/en-us/0147667/err_12052015_6).

⁴⁶ In addition this is also stated in cl. 59 of the Protocol on the condition and transitional provisions pertaining to the application by the Kyrgyz Republic of the EEU Treaty, signed by the EEU Supreme Council on May 8, 2015.

⁴⁷ The Kyrgyz Republic is the WTO member since December 1998.

⁴⁸ WT/TPR/G/288 document dated October 1, 2013.

⁴⁹ In 2014 the department for regulatory and legal support, as well as the WTO SPS Reference Service was established in the structure of the Ministry of Agriculture of the Kyrgyz Republic.

⁵⁰ <http://www.mineconomy.am/uploads/20141612165541464.pdf> (in Armenian).

Under Armenian law, where there is a conflict between local legislation and the provisions of an international treaty, the latter takes precedence. Therefore it is not mandatory to amend local legislation to harmonise it with the provisions of an international treaty. However, the situation where local regulations may formally continue to be in force but contain provisions which are now superseded by international obligations is hardly ideal from the point of view of legal clarity. Nevertheless this appears to be the situation, insofar as Armenia has not formally amended any of its technical regulations (in both the SPS and TBT sectors)⁵¹, and the business community may not necessarily be aware of all the provisions of CU or EAEU technical regulations.

3. THE EFFECTIVENESS OF SUPRANATIONAL LEGISLATION ON FOOD SAFETY AT THE COUNTRY LEVEL

Effectiveness, in the context of SPS enforcement, can be defined as the existence of a comprehensive system of a) substantive legislation and b) administrative set-up, which ensures a high level of consumer safety. In order for national control systems to be effective, they need to be comprehensive, risk-based, adequately resourced and responsive.

European Union

Overall, the country level veterinary and phytosanitary security system should be rated as quite effective in the EU. As a general point, the EU ensures that its legislation is duly implemented by the member states. One proof of this is the internal market scorecard⁵², which is evidence both of the fact that there is a high compliance rate of member states in adopting national legislation to implement EU directives, and of the fact that the EU constantly monitors the situation. As regards SPS sector reforms, clearly there has been an improvement in the security level since the reforms which began in the late 1990s. Implementation of traceability provisions, including animal identification and rapid alert systems, has enabled the competent authorities to respond quickly to emergencies. Although country-level institutional arrangements vary considerably in the 28 member states (single agency models in some, multiple-coordinated authorities in others; in some countries controls are implemented only by central agencies, whilst in others – such as the UK – a combination of central and local authorities conduct the controls), the uniform approach to principles and multi-annual control plans, together with the oversight role of the FVO ensures that security levels remain high.

Naturally, there can be deficiencies. FVO audits regularly reveal issues and make corresponding recommendations. For example, in one country they may find that the principle that "official controls are to be carried out without prior warning" has not been observed; in another country they may find that traceability documentation is not sufficiently detailed, and so on. Ultimately – particularly in the case of imports – the system is only as strong as its weakest link.

Overall, the combined SPS system at EU and member state level must be rated as very effective, because of the comprehensiveness of the legislation, the capacity of the implementing agencies both at EU and national level, the risk-based approach and the effective dual-level control system in place. All this is due not only to the fact that there has been a substantial

⁵¹ The Armenian National Institutes of Standards provides a list of technical regulations, most of which were adopted before 2010: http://www.sarm.am/am/act_of_the_law/kanonakarger (in Armenian).

⁵² [http://ec.europa.eu/internal_market\(scoreboard/](http://ec.europa.eu/internal_market(scoreboard/).

overhaul of the system during the last 20 years, but also because the EU represents a trading bloc of developed countries with significant public administration expertise. Ultimately, the role of EU level regulation is vital, comprising the following components:

- Strict approach to uniform legislation, with no derogation permitted at national level
- Independence and competence of key institutions such as EFSA and FVO
- Existence of rapid alert systems such as RASFF, TRACES and EUROPHYT
- A comprehensive and logical framework of substantive legislation backed up by uniform enforcement principles and effective control systems
- Emphasis on infrastructure and training, and assistance to new members to build their capacity.

Eurasian Economic Union

In EAEU member countries the effectiveness of the veterinary and phytosanitary system is compromised by inconsistencies and capacity constraints.

Inconsistencies arise on a number of levels. Firstly, supranational legislation is still in the process of development, and so the existence of uniform rules for all the member states depends partly on the product concerned. Secondly, there can be a lack of clarification in practice as to which legal act applies in any given case – the national or the EAEU-level legislation. Thirdly, there are cases where national legislation may apply to products destined for purely local consumption (i.e. within the particular member state only), whilst EAEU rules apply to products exported to other member states. Fourthly, corruption risks, which are generally higher than in the EU member states, may lead to inconsistent application of the rules. The lack of supranational principles regarding national official control systems also leads to variations in practice between the member states.

Capacity constraints also affect the ability of member states to ensure application of SPS rules. These constraints concern, for example, laboratory systems, HACCP implementation, traceability, zoning and animal identification.

In contrast to the EU, the combined system in the EAEU cannot be regarded as very effective yet. As noted previously, there are deficiencies at both levels, such as:

- Not all key principles are in place or fully articulated at the supranational level
- Despite some ad hoc joint inspections, there is no system of supranational audits, nor are there uniform rules concerning national control systems
- EAEU rules are inconsistently applied at the national level for a number of reasons, leading to a lack of uniformity of application both within individual members and between member states
- Capacity constraints impinge on the ability to effectively apply legislation.

Notwithstanding these drawbacks, the EAEU can offer advantages for member countries under certain circumstances. For instance, in Kyrgyzstan the pressure exerted by accession negotiations prompted the Kyrgyz government to adopt legislation related to animal identification,

veterinary and phytosanitary issues.⁵³ Moreover, the government made funds available for the construction and for equipment at "priority" checkpoints (places of movement of goods and vehicles) to comply with EAEU uniform requirements for SPS border control on the external border of the EAEU. A third fruit of accession was the accreditation of one diagnostic laboratory, the National Centre for Veterinary Diagnosis and Expertise. Though these are undeniable benefits of accession "conditionalities," they can hardly be compared to the conditionalities of EU accession and their transformational benefits.

⁵³ Law On animal identification; Government Decree "Immediate veterinary-sanitary requirements for the prevention of animal diseases" (18 June 2015 No 377), Government Decree "On approval of quarantine phytosanitary regulations of the Kyrgyz Republic and the Regulations on the procedure for the issuance of phytosanitary, re-export phytosanitary and quarantine certificates"(18 June 2015 No 377).

C. CONCLUSIONS: MAIN DIFFERENCES IN FOOD SAFETY SYSTEMS BETWEEN THE EU AND THE EAEU

The present work began by noting that the system of surveillance and control of food safety and animal and plant health is a vital building block of the single market. Without an adequately functioning food safety control system throughout the union the construction of a robust single market is not possible. It is in this light that we consider the main differences in the food safety systems in the EU and EAEU.

The differences between the food safety systems in the EU and EAEU begin at the central or "supranational" level, focusing on the "competences" of centralized institutions vis-à-vis the country level. The overhaul of the EU food safety control system in the 2000s led to a significant transfer of decision making authority to EU institutions. The foremost among these is the European Commission, responsible for policy development and adoption. The EC is at the center of risk management in the EU, aided by expert advice from the European Food Safety Authority and the Food and Veterinary Office, as well as the European Parliament. The European Food Safety Authority provides independent scientific advice on feed and food safety for risk assessment. The Food and Veterinary Office is a directorate of the Directorate-General for Health and Food Safety. The FVO oversees national enforcement of EU SPS measures and assesses control systems in third countries wishing to export to the EU. It conducts regular audits of both member state and third country food safety control systems. In addition to these EU level institutions, the EU supports a number of EU-wide information and notification systems, such as EUROPHYT, RASFF and TRACES which provide for communication of phytosanitary and veterinary threat interception information throughout the Union, as well as traceability of animals within and across borders.

Monitoring and enforcement of food safety regulations related to food business operators is still the responsibility of country level authorities in the EU. However, the principles, processes, protocols and procedures of food safety control are defined by EU institutions and implemented in member countries in a uniform way. Moreover, the FVO conducts regular assessments of country level implementation of the principles, policies, procedures and protocols set by EU regulations and provides recommendations for improvement. Furthermore, the EFSA provides an independent source of information on threat information throughout the Union. The combination of these centralized sources of policy, information and assessments is a powerful tool for the enforcement of food safety principles and procedures throughout the Union.

This system is at once quite demanding and flexible. The EU has a strict approach to uniform legislation, with no derogation permitted at national level. However, the strictness pertains to the principles of the operation of the system, procedures, protocols and information management. The country level institutions of food safety control are not dictated by the EU. In fact, there is a great variety of institutions in EU countries responsible for food safety control.

It is tempting to view the EU model as an example of how an economic union can present an opportunity to build country level food safety control systems:

- (1) Centralized identification of internationally recognized norms and principles for implementation at the country level. The centralization of this function can reduce the need for each country in an economic union to "reinvent the wheel" of defining a workable food

safety system for itself. Instead, both central and country level authorities may work together to achieve the implementation of best practice principles of food safety practice;

(2) Enforcement of food safety principles and procedures at the country level through inspection or audit of a member state's surveillance and control systems and recommendations for improvement; and

(3) Country level investment and capacity building partially funded by the centralized institutions of the economic union.

Though this strategy for building viable food safety systems in developing and transition economies holds promise in principle, it relies heavily on the good will of the member countries. Good will and trust between member countries is necessary for the sharing of competences between member countries and union-level institutions. It is also necessary for the implementation of robust food safety systems in poorer countries, which may require contributions from more wealthy countries. The EU has built good will over many years of building institutions in a variety of areas, but at its core the EU project is built upon a *sui generis* combination of shared democratic values and the conviction that cooperation is preferable to past rivalry which characterized the period before WWII (GOLDIROVA, 2007).

In the EAEU consensus and goodwill have been difficult to come by in the midst of trade wars, distrust between member governments and very different foreign policies (BOGUSLAVSKA, 2015). Such disagreements tend to breed distrust, ruling out substantial agreements for laying the basis for a single market. Repeated experiences of member governments exploiting cooperation to further narrow national interests, instead of deriving mutual benefit from such cooperation ultimately undermines the basis for closer integration (LIANOS and LEBLANC, 2011).

It should therefore come as no surprise that very little, if any, of the EU-type central edifice exists in the Eurasian Economic Union. In fact, despite the existence of the Eurasian Economic Commission with the responsibility of elaborating EAEU policy on food safety to support the operation of the single economic space, the Eurasian Economic Union operates an extremely decentralized system of food safety control. The EAEU food safety system is more a conglomeration of five national food safety systems with an agreed set of food safety, animal and plant health standards levied from above without enforcement. To see this, consider three fundamental characteristics of the system:

(1) Member states have the exclusive right to introduce SPS measures. Each of the EAEU member states is entitled to introduce temporary SPS measures for goods produced by non-member or member countries in response to potential food safety threats. The supranational authorities of the EAEU have no authority in this sphere. The coexistence of different risk management authorities within the EAEU is not a temporary state of affairs. No introduction of EAEU-wide temporary SPS risk assessment or risk management institutions is contemplated.

(2) Though the EAEU Treaty and EAEC Decisions mention a number of principles and procedures that are obligatory at the country level, the supporting regulations for elaboration and implementation have not been issued. Principles, such as animal identification and traceability, provided for in article 56 of the EAEU Treaty, have not yet been set out in sufficient detail in secondary documents to become fully operational. The "farm to fork" principle stresses that the analysis of food safety risks should span the entire value chain of food production, processing, transportation and marketing. An important potential food safety hazard is harmful substance residues in animal feed, live animals and animal products.

However, a coherent system of surveillance, inspection and laboratory analysis of harmful substance residues in animal feed and live animals has not yet been established. These are only two of many key principles that have yet to be elaborated fully in EAEC Decisions or in country level legislation.

(3) There is no mechanism for inspection or audit of a member state's surveillance and control systems, and no mechanism for enforcement of EAEC Decisions. In the EAEU the EAEC has no authority for inspection or audit of a member state's food safety, animal and plant health system. Without such an established system of audits, there is no basis upon which to establish the equivalence of food safety control systems.

Together, these three characteristics would seem to rule out the achievement of a single, fully comprehensive food safety area, just as they would seem to rule out the existence of a single market in the EAEU, at least until a higher measure of goodwill is established within the union.

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