

Il Convegno di Milano del 14-15 ottobre 2015 Global Food Law Trends: EU, USA, China

Bricks and Stones of the GFL Laboratory

Ferdinando Albisinni

Why Bricks and Stones of the GFL Laboratory? Bricks and Stones, because in this area of legal experience, the same elements have worked, in single cases, as obstacles to the path or as elements of the new building, as a divisive or as a joining factor. *GFL Laboratory*, because during the past 20 years Food Law gave us the chance to assist to relevant innovations, both institutional and on the substance of regulation, in an area where science in its multiple declinations has a crucial role, and where technical innovation and legal innovation are in a constant relation, even if it is not always true that “laws are the necessary relations arising from the nature of things” (as Montesquieu assumed in *Esprit des lois*).

GFL emerged as an open laboratory, where its multiplicity of legal bases, of goals, of legal tools, pays the difficulty to give systemic order to a sector rich of crossing tensions, but at the same time expresses a peculiar way of rule-making, where international, regional, and national levels intersect, and where private and public responsibilities are brought to unity through vertical and horizontal cooperation.

In 2000 the EU Commission White Paper on Food Safety, and then in 2002 the Regulation (EC) No 178/2002, expressed in formal terms this approach, as much as they introduced “*the general principles governing food and feed in general, and food and feed safety in particular, at Community and national level*”.

Nowadays even the European dimension appears no more sufficient to comprehend the complexity of real world (the nature of things), and is forced to take into account a Global dimension, linked to “the proliferation, as a functional response to the chan-

ging needs of the world community, of global regulatory systems by sector” – as some scholars observed with reference to other areas of regulation (Chiti - Mattarella, 2011).

This conclusion is especially true in the field of food law, where many engines are simultaneously operating.

International agreements have played and play a significant role. It is sufficient here to mention the WTO agreement and the well known cases discussed before WTO panels (from use of hormones in bovine meat, to GMOs, to GIs). More recently, we must mention the Treaty signed few months ago by EU and Vietnam, the TTP, and the negotiations on the TTIP.

Together with those sources a relevant role is played by recommendations of organisations and institutions, like the Codex Alimentarius Commission, the UNECE, the OIV, which as a matter of principle are classified as *soft law*, but in most cases assume a role very near to *hard law* (as appears even from a summary analysis of the new EU Regulation on CMO, from the recent decision of the Court of Justice on OIV, and from the Commission Regulation on oenological practices). Finally, an increasing role is played by what we could consider as the shared dimension of *Global Food Law*.

A respected scholar of comparative law, Otto Kahn-Freund, coming from studies in a civil law country, and then teaching in a common law country, wrote on “*Uses and abuses of comparative law*” (1974), warning against the dangers of what he qualified as “*legal transplants*”.

To-day, we must recognize that we are facing a tendency to communication of legal models in Food Law, which, far from resulting in legal transplants, expresses a conscious tendency to share models and answers on the basis of shared experiences – as appears from the cases which will be discussed in the paper.

Globalisation of food trade is increasingly linked to



rivista di diritto alimentare

www.rivistadirittoalimentare.it

Anno X, numero 1 • Gennaio-Marzo 2016

5

sharing legal models in a global arena, and in this perspective comparative law appear to be a pre-

cious tool to better know, implement, and in some cases reform, domestic or regional law.

□