Legal objectives and measures to improve the functioning of the food chain in European Union and in Spain

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Abstract
The main problems affecting the agricultural sector in Spain and the European Union on the food chain are analyzed. It is considered the harmful consequences of poor bargaining power in the market that farmers have. In order to mitigate such effects and consequences that distort the overall agricultural sector, the main objectives to be achieved and measures to be implemented from the point of view of the law in force are studied.

Keywords: Improving food chain; current problems; legal objectives and measures.

Introduction

Introductory approach and definitions

Law 12/2013, of 2 August, on measures to improve the functioning of the food chain defines it as "the set of activities carried out by the various operators involved in the production, processing and distribution of food or food products, excluding transport, hospitality and catering activities" (Art. 5.a).

It also defines "food business" as "the set of productive sectors like agriculture, livestock, forestry and fisheries as well as processing and distribution of its products" (Art. 5.b).

In the same conceptual line, law 2/2000 of 7 January on standard contracts of food products includes into the "food system" "all productive sectors involved with agriculture, livestock, forestry and fisheries, as well as processing and marketing of its products" (art. 2.2).

The food chain starts with the first link of the food production and ends with the distribution and marketing of the final product to the consumer, a process that is well reflected in the familiar expression "farm to table".

Thus the food chain system generates an organized set of enterprises and operators in different subsectors, whose "chained" activities is directed to supply the market with food products in appropriate and suitable conditions for final consumption.

As mentioned, the food in Spain is a sign of identity that arises from the variety and richness of the agricultural and food production in this country, that result from the diversity of its lands, seas, ecosystems and traditions. The agri-food sector in Spain has an undeniable strategic value for the national economy. However, it is a vulnerable sector as a whole by its own characteristics, as it integrates a wide variety of actors in the sectors of production, processing and distribution, which are limited by their individual idiosyncrasies.

In other words, it is evident relevant imbalances between the various links in this food chain, where almost always the first link (primary production, the farmer or rancher) usually get injured against the subsequent stages of the processing industry and distribution.
Thus, among many others, come to the fore issues such as the low price of agricultural productions (which scarcely pays production costs); year after year you can see stagnation or even decline output prices of food products against the steady increase of costs and production inputs; the minimum profitability of the primary agricultural sector; draconian contractual conditions to the producer; high risk taking by their activity (meteorological, biological, market...); unfair competition from producers of third countries; the limited reaction to market contingencies (such as Russian veto on EU products), etc.

All this problems had led to the abandonment of many farms and rural population desertification of large areas of Spain, with the aggravation that involves not only the loss of agricultural productive potential (crop set-aside), but also the pernicious direct effects on rural areas and the environment.

In this global context, the contractual aspects that affect the development and creation of economic activities and transactions within the food chain, could play an important role in improving working conditions and living standards of farmers. To achieve this, the agricultural product must be fairly and reasonably remunerated by the market, and producers should join the incentives and opportunities to organize and concentrate the offer in a much more efficient way than present. They will strength its bargaining position in the market and will get better prices reflected in the contracts signed by them.

1. Current problems affecting the food chain

The first problem affecting the food chain is the existence of significant imbalances between different links in the chain, with evident asymmetries in bargaining power between operators in the agrifood system.

Indeed, on one side the primary production sector in Spain suffers from weaknesses by several factors.

First of all the activity of the farmers is characterized by being exposed to risks arising from the nature of agricultural activity, exposed to the open air, often under adverse and uncontrollable weather conditions, and may also suffer risks of biological type as plant or animal health diseases, pests, etc. In that sense, the Preamble of Law 2/2000 on standard contracts of food products noted that "agriculture and fisheries develop a biological activity with a close dependence of the natural environment. These conditions involve some risks both for the production process and the perishable nature of the products, all assuming a high degree of uncertainty in the activity. Being biological processes, production cycles are long and seasonal. Moreover, as these products are usually perishable, its offer has stiffness and lack of adaptation to demand".

Also the business organization of farming in Spain suffers from signs of severe fragmentation, territorial dispersion, as well as limited modernization, with the presence of many small farms or family size, poorly updated or modernized, with little investment and with minimal economic profitability, and with a bad perspective of succession in the agricultural holding.

The sub-sector of “food production” in Spain is not significantly concentrated in order to face and negotiate prices and other conditions of business transactions. By contrast, the subsector of “distribution” presents selling channels more organized and grouped, concentrated in a few retailing groups (often multinational), which gives them great bargaining power with suppliers or producers. That is, a great power of imposition of contractual conditions and especially selling prices.

We can now remark another problem about the food chain functioning: the high volatility of prices paid to producers between one to another agricultural season.

As pointed out by the preamble of Law 12/2013 on measures to improve the functioning of the food chain, "this heterogeneity undoubtedly has conditioned the operation and relations of agents operating
throughout the food chain, showing deficiencies aggravated in the context of the current global economic crisis. The volatility of prices received by producers, the high cost of inputs and instability of international markets, are conjunctural factors that have weakened the competitiveness and profitability of the food industry”.

As a direct result of that situation, it highlights the great lack of transparency in price formation moving into contracts with producers. In this regard it is said that "the special structural characteristics of the food system do, moreover, difficult knowledge of the transactions that the different and numerous operators performed, resulting de facto lack of transparency in the market, away from the desirable perfect competition" (Preamble of Law 2/2000).

And finally, the situation of imbalance between the commercial positions of the different operators in the food chain, in many occasions becomes in unfair trade practices, abuse of dominant position and anti-competitive practices, very far from what it should be a good practice in food contracts. Obviously the effects are really negative, in terms of market distortion, improper functioning of the internal market and the loss of competitiveness of the whole agrifood system.

2. Goals and objectives to improve the functioning of the food chain

2.1. Steps to be taken

Both institutional and legislative steps are being taken to achieve improvements in the food chain.

Within the European Union the problems described above are well known. In fact the European Commission adopted in 2009 a Communication on “improving the functioning of the food chain”. Since then many initiatives have been taken to analyze and identify the real problems affecting the development of the chain. It also emphasizes the constitution, in late 2011, of the High Level Forum on Improving the Functioning Food Supply Chain.

About the legislative initiatives, both the general EU rules, framed within the Common Agricultural Policy, as some state regulation in Spain, have attempted to address various problems of the functioning of the chain. Among them some issues related to contractual aspects.

We must cite now the Regulation 1308/2013 of 17 December, establishing a common organization of the markets in agricultural products. This Regulation together with Regulation 1307/2013 establishing rules for direct payments to farmers under support schemes under the common agricultural policy, form the so-called first pillar of the CAP (organization market policy and payments).

At the national level, it is relevant the aforementioned Law 12/2013 on food chain. The aims of the law are set on the preamble and in art. 3. They are perhaps too ambitious or utopian in relation to the practical content of the Law.

2.2. The main goals proposed

a) To improve functioning, balance and structuring of the food chain.

This objective addresses the core of the problem we studied, since it is clear that food chain does not work properly because of serious imbalances in trade relations between different operators.

Above all, measures and actions should be undertaken to provide greater balance between the positions of production in relation to the processing industry and the distribution sector.

This idea is sensed in Preamble of Regulation 1308/2013 (n. 138): ”It should be possible to adopt certain measures to facilitate the adjustment of supply to market needs, which can help to stabilize markets and ensure an equitable standard of living to farmers concerned”.

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Also the Preamble of the Law 12/2013 affects this issue: "The proper functioning of the food chain is essential to ensure sustainable added value for all operators which contribute to increase its global competitiveness and also a common benefit for consumers. Therefore, it is essential to solve this problem from an overall perspective that reaches all agents that interact along the food chain, so that the unity of the market can be ensured and the food industry can fully develop and deploy all their potential”.

b) Strengthening the productive sector and enhancing the activities of interbranch agri-food organizations.

This is a goal closely directed to the structuring and balance of the food chain.

Indeed, in many passages of Regulation 1308/2013 it is reflected the interest of the EU to strengthen the bargaining position of the producer sector. In that way producer organizations and associations of producer organisations, officially recognized, to carry out the commercial and contract negotiations (preamble, n. 131: "Producer organisations and their associations can play useful roles in concentrating supply, in improving the marketing, planning and adjusting of production to demand... ").

And this function is specified in various productive sectors, such as milk and milk products (preamble n. 128 subsectors: "In order to ensure the viable development of production and a resulting fair standard of living for dairy farmers, their bargaining power vis-à-vis processors should be strengthened, which should result in a fairer distribution of added value along the supply chain... "... “to allow producer organisations constituted by dairy farmers or their associations to collectively negotiate with a dairy contract terms, including price, for some or all of their members' raw milk production”; see also Article 149); about olive oil sector and supply contracts (Art. 169); beef and veal sector regarding supply contracts of cattle for slaughter (Article 170); or in relation to supply contracts for certain arable crops (art. 171). As preamble announced: "In order to ensure the viable development of production and thus a fair standard of living for producers in the beef and veal and olive oil sectors, as well as for producers of certain arable crops, their bargaining power vis-à-vis downstream operators should be strengthened, thereby resulting in a fairer distribution of added value along the supply chain" (n. 139).

However, for proper positioning of the production sector in the framework of the negotiation of agrifood contracts, one of the outstanding features of the producer organisations is to concentrate supply and marketing of the products of its members, including direct marketing (vid. art, 152.1.c) of R. 1308/2013).

But at the same time that it is strengthening the production sector, it also should be strengthened the operation and performance of Agrifood Interbranch Organisations (AIO), whose legal status in Spain is included in Law 38/1994 of 30 December.

According to art. 2 of Law 38/1994, Agrifood Interbranch Organisations are constituted by representative organizations of the agrifood production, processing, marketing and distribution, whatever the legal nature of the members represented. An IAO should include an area of the total state or at least an area greater than an Autonomous Community.

On the other hand, the Regulations 1308/2013 states that "interbranch organizations can play an important part in allowing dialogue between operators in the supply chain, and in promoting best practices and market transparency" (Preamble, n. 132). The Regulation 1308/2013 rules the AIOI in arts. 157 and 158, permitting Member States to legally recognize these organizations and to define possible functions and objectives to fulfill.

In the same way, Spanish Law 38/1994 includes, among others, the following purposes of agrifood interbranch organizations (art. 3):

a) To ensure the proper functioning of the food chain and to encourage good practice in relationships between partners as they participate in the value chain.

b) To carry out activities to improve the knowledge, efficiency and transparency of markets.

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...  
e) To contribute to improving the coordination of the various operators involved in the process of placing new products on the market.  
...  
i) To develop standard contracts compatible with the rules of national and Community competition law.  
...  
k) Collective bargaining price where there are binding contracts under the terms provided for Community rules.  
...  
n) To promote efficiency in the various links in the food chain.

Also we can mention the so called "rules extension", which are passed by an AIO and can have a positive effect. Art. 8 of the Law 38/1994 states: "Once it is adopted an agreement in the agrifood interbranch organization, it will rise to the Ministry of Agriculture, Food and Environment. The Ministry will pass the proposed extension of all or some of its rules to the total set of producers and operators of the sector or product involved".

The requirements and conditions of such extension are detailed in article 8 and in subsequent regulatory developments.

c) Ensuring a fair, loyal and effective competition in the food chain.

We have already shown that the imbalance of trade positions between the production sector and the processing/distribution sectors may generate abuses in negotiations and economic transactions (which are manifested in contracts).

So, in order to avoid unwanted, abusive, unfair and contrary to competition law trading practices, it is a global goal to achieve the right functioning of the food chain.

In Spain the special legislation about this topic is already passed: we talk about Law 15/2007 of 3 July, on competition defense and Law 3/1991, of January 10, on unfair competition. Law 12/2013 also regulates in Arts. 12-14 certain “unfair commercial practices”.

d) To increase the efficiency and competitiveness of the food industry from a global point of view.

To achieve this purpose market unit should be defended. So "the guarantee of a unified market in the scope of food chain is a key competitive factor to enable better use of economies of scale, division of labor and the intensity of competition, reducing production costs, improving productivity and allowing higher levels of employment and welfare "(Preamble of the Law 12/2013).

Do not forget that within the World Trade Organization, where agricultural production is included for years and where the EU is included as a partner, we must compete with other nations and other economic systems within a supply market more and more global and competitive. Technology and the extension of intercontinental transport facilitate trade. So there are reaching Europe food products worldwide. This in turn requires much higher levels of competitiveness to the European food industry, and not only in relation to the amount of product produced, but especially in the field of products quality and its differentiation from the rest.

e) Objectives and purposes of social nature.
These objectives favor the achievement of benefits for society in general, for the common benefit, without focusing on a particular and specific beneficiary. Therefore they have a social component and public interest.

First of all, consumer rights will be ensured in several aspects: improving full and effective information about foods and their quality; providing transparency to the functioning of the supply chain; and providing sufficient food and quality products (art. 3.h, Law 12/2013).

Talking about access and provision to information, it is relevant to introduce innovation measures and information and communication technologies into the food chain.

Along with this, the Preamble to the Law 12/2013 states as common goal, among others, the maintenance of an adequate level of prices in the food chain.

From the perspective of a food consumer, we must remember that art. 33 of the Treaty establishing the EEC includes among the objectives of the Common Agricultural Policy the following: 1) to ensure security of supplies; 2) to ensure that supplies reach consumers at reasonable prices. Well, both purposes shall be present in the functioning of the food chain, in order to benefit consumers and to guarantee them an adequate food supply and "reasonable" prices.

But from the perspective of the agricultural producer, the reference to "price maintenance" has a very different scope than the consumers. Food producers claim a decent remuneration of their work and agricultural production, in the way it was stated in the EEC Treaty: "to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture (Art. 33.1.b)”. But in many cases that purpose is not been achieved.

Second, it is essential to generate or improve employment, which is important for the whole society, for rural areas and for national economy (art. 3.a, Law 12/2013).

In that regard "the importance of everything related to food, is not derived only from the need to satisfy a primary function of every human being, but of the intrinsic relationship traditionally maintained between food and society, economy and rural areas in Spain. This inexorable link has been consolidated over time and generating a sector of vital importance. The food sector not only meets the demands of consumers, but generates wealth and contributes significantly to economic growth and development of Spanish rural areas "(Preamble of the Law 12/2013).

Therefore the food industry in Spain has an undeniable strategic value for the national economy, as is corroborated by the economic figures on its share of gross domestic product, trade balance, its size, the number of jobs created, etc.

Finally, the spread of the culture of sustainability in the food chain will be encouraged as a factor of corporate social engagement (art. 3.j, Law 12/2013).

Nowadays you could not miss an allusion to the general principle of sustainability or sustainable development. This principle is applicable to the food chain functioning. That means that the triple consideration or scope of that principle (economic, social and environmental sustainability) should be apparent at different stages or links in the chain. In practice, that general principle of law has already found specific application through a multitude of national and European regulations and laws implemented to the agriculture and food sector. For example, the so called “agri-environmental” measures, which aim to achieve compatibility between the systems of agricultural production and environmental protection and also the protection and rational use of natural resources.
Conclusions

The agri-food industry in Spain and in the European Union has an undeniable strategic value for the global economy. But nowadays the agri-food industry in Spain is especially vulnerable because of its own internal characteristics.

Long are obvious large imbalances between the links of the food chain. In particular the sector of agricultural or livestock producers usually get injured compared to the processing industry and distribution.

In a global context of permanent crisis in agriculture, contract negotiations within the food chain should play an important role in improving working conditions and living standards of farmers.

Agricultural producers should take advantage of the incentives and opportunities offered by the current regulations in order to regroup and organize. So, they should constitute sized agricultural cooperatives, more efficient, introducing economies of scale, or they should create other organizations and associations of agricultural producers in that way. The overall objective is to concentrate supply as much as possible and in a more efficient way.

It must be strengthened the bargaining position of farmers in the market in order to get better prices stated in contracts. In short, it is essential to achieve certain strategic objectives within the framework of the food chain: improve performance, balance and structuring of the food chain; strengthen producers and enhance the activities of agrifood interbranch organizations; ensure a just, fair and effective competition in the food chain; increase efficiency and global competitiveness of the food industry; and finally deepen goals and objectives of a social nature.

References


