Food safety systems and criminal law provisions in Poland in compliance with EU law

Introduction

The development of civilization and growing world population has dramatically increased food demand. In addition, food mass production increasingly based on processing and modification often lacks appropriate nutrients. Suitable regulation is therefore required to ensure food quality and safety irrespective of place or processing method. Here, European Commission Regulation (EC) No. 178/2002 was enacted to ensure food quality and safety throughout the European Union (EU). This first established general rules and requirements in food legislation, and then constituted early warning and emergency systems. These included the European Food Safety Authority (EFSA), the Rapid Alert System for Food and Feed (RASFF) and the Hazard Analysis and Critical Control Point assessment (HACCP).

Article 7 of Regulation 178/2002 covers all general purposes in the food law, including; (1) ensuring consumer health and life safety, (2) protecting community interest by fair food trading, (3) consideration of animal health, welfare and living conditions and (4) ensuring the health of plants and the natural environment. Provisions interwoven in the law’s basic aims also cover risk analysis, precautionary principles, consumer interest protection and transparency. Here, Article 5 protects health care, living standards, consumer interest and efficient internal EU marketing by legislating criminal

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sanctions for illegal activities in food production and trade. The provisions of this regulation were implemented in Polish legislation in the Act of 2006 on Food and Nutrition Safety\textsuperscript{2}. This paper analyzes food safety systems, threats and penal instruments in Poland and the EU. In this paper the science method was analysis of the literature of subject and Polish and EU legislations, systems in the range of food safety.

**Threats and the state of food in Poland and EU**

Pollutants and impurities constitute the main threats to food safety. The Polish 2006 Act on food and nutritional safety defines pollutants as environmental contaminants unintentionally added to food which are retained during all stages of manufacturing and production, transportation and storage. Food pollutants also include biological contaminants, excrescences and vermin and their residues. This expands on the EC Regulation 178/2002 definition of food pollution as potential or existing threat. Food threats consist biological, chemical and physical factors in food and fodder causing impaired human health. These factors include fats, oils, remnants of medicines and pesticides, parasites, viruses, bacterial toxins, acids, alkali, dioxins, heavy metals and radioactive substances. Increased threats to human health and life also come from rapid societal changes in consumption models and food production, including increasing processed food. Contaminated food remains a major cause of human illness; especially witnessed in poisoning, allergy and parasitic and enzootic infectious disease\textsuperscript{3}.

The Global Food Security Index (GFSI) was launched by the Economic Intelligence Unit (EIU) in 2012 and has since been adopted by 109 countries. This is an essential instrument in assessing food safety, in Europe and globally, and its categories and indicators were chosen by EIU expert analysis and specialist food safety panel consultation. Data formulating these choices came from the UN, IMF, WHO, FAO, and the World Bank.

The GFSI has three thematic categories:

1) price attainability: denoting consumer ability to purchase food products,

2) food access: assessing the food supply state in a given country,

3) quality and safety: covering food diversity, sustenance and safety.

The 2015 European food safety assessment placed the following countries in descending order of excellence: Ireland, Austria, the Netherlands,\textsuperscript{2}

\textsuperscript{2} Act of 2006 on Food and Nutrition Safety (Official Journal from 2017, pos. 149).

Switzerland, Germany and France. Poland made 28th place on 74.2%. Since its 2012 inception, GFSI increase is especially evident in Ireland, Poland and Greece (Table 1).  

Table 1

<table>
<thead>
<tr>
<th>Position/country</th>
<th>GFSI</th>
<th>Position/country</th>
<th>GFSI</th>
</tr>
</thead>
<tbody>
<tr>
<td>3rd Ireland</td>
<td>85.4</td>
<td>18th Belgium</td>
<td>79.5</td>
</tr>
<tr>
<td>4th Austria</td>
<td>85.1</td>
<td>19th Spain</td>
<td>78.9</td>
</tr>
<tr>
<td>5th Netherlands</td>
<td>85.0</td>
<td>22nd Italy</td>
<td>77.0</td>
</tr>
<tr>
<td>6th Switzerland</td>
<td>84.4</td>
<td>25th Czech Republic</td>
<td>74.9</td>
</tr>
<tr>
<td>8th Germany</td>
<td>83.9</td>
<td>28th Poland</td>
<td>74.2</td>
</tr>
<tr>
<td>9th France</td>
<td>83.8</td>
<td>29th Greece</td>
<td>73.5</td>
</tr>
<tr>
<td>12th Sweden</td>
<td>82.9</td>
<td>31st Hungary</td>
<td>71.4</td>
</tr>
<tr>
<td>16th Portugal</td>
<td>80.5</td>
<td>32nd Slovakia</td>
<td>70.7</td>
</tr>
</tbody>
</table>

In Poland are three food and fodder safety inspections:
1. The State Sanitary Inspection; controlling adherence to regulations covering hygiene and health requirements in production, transport, storage and food sale, and also conditions to be observed in mass catering (Act of 1985 on the State Sanitary Inspection).
2. Veterinary Inspection; supervising the safety of animal origin products (Act of 2004 on the Veterinary Inspection).
3. Main Inspectorate for Plant Health and Seed Inspection; ensuring creation, preservation and observance of safety standards in exported plant-origin food (Act of 2003 on plant protection).

Food quality control assessment is based on organoleptic features, physico-chemical parameters and product composition registered in the producer’s declaration. These must comply with community and domestic regulatory requirements. Annual gastronomic testing in 2013 assessed the quality of 5,027 foods and 1,908 raw material supplies. Poor quality was established in 594 foods (11.8%) and 113 raw material supplies (5.9%); thus exceeding 2012 values by a few percent. The causes of stated product irregularities were as follows: (1) improper technological processes, (2) poor quality raw materials.

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6 Act of 2004 on the Veterinary Inspection (Official Journal from 2015, pos. 1482 with changes).
materials, (3) substitution of cheaper raw materials, (4) additives not complying with strict regulations, (5) incorrect storage of raw materials and final products and (6) intentional distortion of food product quality.

### Food safety systems

Regulation EC No. 178/2002\(^9\) determined general food safety requirements; so that strict compliance would prevent dangerous foods release on the market. Its provisions defined perilous food as those harmful to health and therefore unsuitable for human consumption. Poland and other EU countries adopted the following essential food security systems (Poland's Food and Nutrition Safety Act; Article 3 Points 41 and 42):

1. Hazard Analysis and Critical Control Points (HACCP)
2. Rapid Alert System for Food and Feed (RASFF).

HACCP was implemented in Denmark as Danish Standard 3027 2nd edition in Romania as the Food Safety Management SSC 22,000 System and it was also adopted in Turkey and Bulgaria as OLP\(^10\). This early warning system is particularly important in legal enforcement of quality control during food production. It legislates proceedings for food safety by identifying and estimating; (1) the extent of threats to food health under “a threat scale”, (2) threat risks throughout food production and trading and (3) it determines methods to reduce and eliminate threats and to restore appropriate safe food-handling strategies\(^11\). Table 2 herein lists the system’s seven principles; from threat analysis to effective elimination\(^12\).

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Table 2

Principles of the HACCP system

<table>
<thead>
<tr>
<th>Principle</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principle 1</td>
<td>conducting analysis of threats</td>
</tr>
<tr>
<td>Principle 2</td>
<td>determining Critical Checkpoints – CCP</td>
</tr>
<tr>
<td>Principle 3</td>
<td>determining the value of critical limits</td>
</tr>
<tr>
<td>Principle 4</td>
<td>establishing monitoring systems of parameters in CCP</td>
</tr>
<tr>
<td>Principle 5</td>
<td>establishing correcting action which should be taken in the situation when monitoring shows that given CCP is not under control</td>
</tr>
<tr>
<td>Principle 6</td>
<td>developing verification procedures to confirm that HACCP system is acting effectively</td>
</tr>
<tr>
<td>Principle 7</td>
<td>establishing documentation containing all procedures and records adequate for principles mentioned and applying them</td>
</tr>
</tbody>
</table>

Poland has instituted Good Manufacturing Practice (GMP) and Good Hygiene Practice (GHP) to further ensure food safety. Here, GMP determines procedures which must be taken and conditions which must be fulfilled for food safety, and this is closely allied with GHP which enforces principles determined in EC Regulation 852/2004 for staff hygiene and determines requisite sanitary food-manufacture infrastructure. The following EC regulations have been enacted for animal origin products; (1) Reg. 853/2004 defines hygiene requirements for animal origin food; (2) No. 854/2004 legislates auditing of these foods and (3) No. 882/2004 establishes checks for food and fodder legal requirements and controls for animal health and welfare.

The RASFF is designed to eliminate threat sources potentially hazardous to health. It defines proceedings for food auditing and safety margins under Regulation 178/2002 articles 50–52, and it requires collection and transmission of information on animal feed capable of threatening consumer health. The RASFF in Poland is overseen by the Chief Health Inspector (CHI) appointed under the 2006 Food and Nutrition Safety Act and Regulations. The CHI is the national RASFF contact who reports dangerous food and feed in Poland to the EC.

Food produced and marketed in Poland must meet EC Regulations and European Union directives and also comply with Article 3 Section 2 of the national 2006 Food and Nutrition Act. This legislates that only food products which satisfy the food law can be marketed and traded in Poland13. Where there is justified suspicion that a home-produced or imported food threatens human health or life, the appropriate food audit authority will demand confirmation from the trader that health requirements are met within a specified period of time. For imported food, Article 6 of this Act legislates that

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relevant health documentation must be issued by competent authorities in the country of origin.

Voluntary systems which increase controls for products released on the market now supplement the legal requirements. Systems for improved food quality and safety have been introduced by independent consumer organizations (ICO’s) and industry. Here, ICO’s aim to protect human and animal welfare and industries act to protect profit. While ISO 22,000 International Norm is the most popular voluntary system of food safety and quality supervision, the Safe Quality Food Institute has drawn up its own agenda. Typical industry protectors include the British Retail Consortium, with their applied hypermarket standards, and the Global Red Meat Standards association\textsuperscript{14}.

\textbf{Criminal law food protection}

While food safety laws and regulations primarily protect human health and life, they also protect consumer rights and economic ventures\textsuperscript{15}. In addition, EU Regulation No. 178/2002 Art. 17 Sec. 2 confers disciplinary sanctions on contravened food safety, and, all EU member countries are obliged to determine principles for punitive measures and criminal penalties for infringements to food and fodder laws. Established measures and penalties are to be proportional to the extent of infringement and also to act as effective deterrents.

Poland has adopted EC Regulation 178/2002 procedures for adequate food safety and health, and supervises hygienic handling of food and all materials and products in contact with food. In addition, essential food auditing is conducted under the 2006 Food and Nutrition Safety Act and its provisions. Figure 1 herein highlights that Poland also complies with EC stringent sanction expectations by penalizing all infringements in food safety under Articles 96–99 of the 2006 Act. Actions subject to criminal liability include infringements against all stated and implied safety principles, and especially embrace criminal intent and reckless, lax and negligent behaviour in the commission of all food production and trade procedures.

\textsuperscript{15} J. Bińkowski, \textit{The legal aspects of production and food trade on small scale in European countries. The legislation analysis, examples of legal solutions in the member’s countries}, Warsaw 2014, p. 328–332.
### Food and Nutrition Safety Crimes

<table>
<thead>
<tr>
<th>Law Number</th>
<th>Description in the Act</th>
<th>Penalty threat</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 96 sec. 1</td>
<td>Intentional producing or introducing universally eaten foodstuffs that harm people's health or life</td>
<td>(1) fine in daily wages (substantially, the fine cannot exceed approximately 257,000 Euro), or (2) voluntary work or deduction from salary for up to 2 years, or (3) imprisonment for up to 2 years</td>
</tr>
<tr>
<td>Article 96 sec. 2</td>
<td>Intentional producing or introducing special purpose foods, dietary supplements or new foods harmful to people's health or life</td>
<td>(1) fine in daily wages (substantially the fine cannot exceed approximately 257,000 Euro), or (2) voluntary work or deduction from salary for up to 2 years, or (3) imprisonment for up to 3 years</td>
</tr>
<tr>
<td>Article 96 sec. 3</td>
<td>If the perpetrator makes a permanent source of revenue from intentional acts (under points 1 and 2), or a permanent source of revenue from valuable foodstuffs which exceeds 47,000 Euro during the act</td>
<td>imprisonment from 6 months to 5 years</td>
</tr>
<tr>
<td>Article 96 sec. 4</td>
<td>Unintentional commission of a crime under points 1 and 2.</td>
<td>(1) fine in daily wages (substantially the fine cannot exceed approximately 257,000 Euro), or (2) voluntary work or deduction from salary of 10–25 % net remuneration each month, or (3) imprisonment up to one year</td>
</tr>
<tr>
<td>Article 97 sec. 1</td>
<td>Intentional production or introduction of spoiled or distorted quality food to the market</td>
<td>(1) fine in daily wages (substantially the fine cannot exceed approximately 257,000 Euro), or (2) voluntary work or deduction from salary of 10–25 % net remuneration each month, or (3) imprisonment up to one year</td>
</tr>
<tr>
<td>Article 97 sec. 2</td>
<td>The same action in point 5, but committed on food with considerable value, (exceeding 47,000 Euro during the act)</td>
<td>imprisonment from 6 months to 3 years</td>
</tr>
<tr>
<td>Article 98 sec. 1</td>
<td>Managing food sales from a distance without submitting compulsory registration to the competent authorities</td>
<td>(1) voluntary work or deduction from salary of 10–25 % net remuneration each month for up to 2 years, or (2) imprisonment up to 1 year</td>
</tr>
<tr>
<td>Article 98 sec. 2</td>
<td>If the perpetrator of the crime in point 7 made a permanent source of revenue, or committed an offence with food of considerable value (exceeding 47,000 Euro during the act)</td>
<td>imprisonment from 6 months to 3 years</td>
</tr>
<tr>
<td>Article 99 sec. 1 point 1-6</td>
<td>Each irregularity in marketing genetically modified food (for example; without the required permission for dealing or incorrect tagging)</td>
<td>(1) fine in daily wages (substantially the fine cannot exceed approximately 257,000 Euro), or (2) voluntary work or deduction from salary of 10–25 % net remuneration each month for up to 2 years, or (3) imprisonment up to 2 years</td>
</tr>
<tr>
<td>Article 99 sec. 2</td>
<td>Marketing new food without obtaining the permit in article 7 Regulation 253/97 or inappropriately tagging new food as required by article 8 of this regulation.</td>
<td>(1) fine in daily wages for up to 2 years (substantially the fine cannot exceed approximately 257,000 Euro, or (2) voluntary work or deduction from salary of 10–25 % net remuneration each month or penalty of imprisonment for up to 2 (3) imprisonment up to one year</td>
</tr>
</tbody>
</table>

**Figure 1.** Crimes contravening Food and Nutrition Safety Act
Conclusions

1. European Commission Regulation (EC) No. 178/2002 and its provisions were implemented to ensure food safety in the European Union (EU). Poland was amongst the countries who adopted this regulation which established general rules and requirements of food laws under the EC constituted European Food Safety Authority (EFSA).

2. Essential early warning in animal, and ultimately human, food safety was provided by The Rapid Alert System for Food and Feed and threat analysis and harm minimization was regulated by the Hazard Analysis and Critical Control Points system. These interventions, together with Good Manufacturing Practice and Good Hygiene Practice, were initiated to protect EU populations from dangerous practices and unhealthy food.

3. The legal protection of food safety is provided by the original EC Regulation 178/2002 and the national 2006 Food and Nutrition Safety Act and its provisions. Criminal sanctions were thus created for all contraventions of established food production, handling and trading safety which pose a threat to human health and life (for details see Fig. 1). The application of these sanctions, especially against intentional profit-driven, intentional as well as reckless or negligent behaviour, meets social expectations.

4. Finally, the implementation of all legally binding rules for safe food production and trade and the sanctions against illegalities have vastly improved food safety throughout Europe. One proof of the effectiveness of this European, is that the Global Food Security Index increased between 2012 and 2015 in Poland, Ireland and Greece in 2014.

References


Bińkowski J., The legal aspects of production and food trade on small scale in European countries. The legislation analysis, examples of legal solutions in the member’s countries, Warsaw 2014.


Summary

**Key words**: food safety, HACCP and RASFF systems, Global Food Security Index

European Commission Regulation (EC) No 178/2002 was implemented to ensure food safety in all European Union countries. Its provisions established rules for general production and procedures for food safety. This was followed by the appointment of the European Food Safety Authority and also emergency and threat systems including the Rapid Alert System for Food and Feed (RASFF) and the Hazard Analysis and Critical Control Points intervention (HACCP). Poland immediately adopted these procedures and also the later 2004 Regulations for Good Hygiene Practice and Good Manufacturing Practice. All these provisions then became law in Poland through its 2006 implemented Act on Food and Nutrition Safety. Criminal sanctions were also imposed for illegal activities in food production and manufacture. As a result of these operations at the European Union level, assessment of food safety via the Global Food Security Index increased between 2012 and 2015, especially in Poland, Ireland and Greece.