

## SUMMARY

Food safety and quality are crucial for public health. Indeed, the basic function of food is to ensure human life and health. In this sense, food is a special good. However, it is fully covered by the definition of “goods” developed in the case law of the European Court of Justice (ECJ). As a result, its trade is subject to the free movement of goods. Any restrictions on this freedom are possible only under certain conditions. One of them is the justification of restrictions on grounds of the protection of public health, as indicated in Article 36 TFEU. Therefore, the conditions for trade in food are complex.

The aim of this dissertation is to answer the following research question: do the legal instruments available to Member States under TFEU and secondary EU legislation allow them to ensure public health protection in their territories in the context of food trade? In other words: is the use of these legal instruments effective in order to justify restrictions on food trade motivated by the general interest of public health protection?

To answer the research question, the following issues were analysed across six chapters.

In chapter I, the concept of food and its socio-economic significance were analysed. The need for ensuring food safety and security was highlighted, and reference was made to the goals of the Common Agricultural Policy (CAP). The relationship between agricultural products and food was also discussed, as well as the development of EU food law.

Chapter II presented the issue of food trade in the light of the free movement of goods. The legal grounds indicated in Article 36 TFEU that may be related to food trade were outlined. Selected treaty provisions on agriculture were also examined to determine whether they contain specific rules allowing for derogations from the general principles of free movement of goods with regard to agricultural products.

Chapter III addressed the issue of public health protection in the EU legal system. The definition of public health was presented, as well as the scope of the competence of the EU and its Member States in this area. The level of harmonisation in the areas of the CAP and food law relating to public health was also analysed. The precautionary principle was discussed.

Chapter IV provided a comprehensive analysis of the way in which Member States use the general interest of public health protection to justify restrictions and measures

having equivalent effect in food trade. Areas where Member States most commonly adopt measures having equivalent effect to quantitative restrictions were identified and analysed. These are: food naming; origin labelling; national quality marks for food containing indications of geographical origin; promotion of domestic food; national requirements for food quality; prior authorisation procedure; restrictions on food distribution; administrative practices of Member States; and food advertising.

Chapter V addressed the issues of customs, tax and price restrictions, as well as monopolies in food trade. These measures may constitute a form of economic protectionism.

Lastly, Chapter VI contains an in-depth analysis of derogations from the EU harmonisation measures. Firstly, two derogation mechanisms contained in Article 114 TFEU were examined. One of them allows a Member State to maintain its previous national regulations, which constitute a derogation from the harmonisation measure. The second allows a Member State to introduce new regulations that differ from an already adopted EU secondary law act. Their theoretical-legal analysis was supported by practical examples of their application. Then, safeguard clauses contained in EU secondary law acts were analysed. National regulations adopted based upon them constitute a derogation from the harmonising act and thus may cause restrictions in food trade. Examples of their application were given.

The research was conducted using the dogmatic-legal method. The position of the doctrine and legal acts, including decisions of the Commission addressed to the Member States, were examined. The research relied heavily on the jurisprudence of the Court of Justice of the European Union (CJEU). Interdisciplinary research was also partially relied upon.

The considerations made in the dissertation allowed for the verification of the following research thesis: legal instruments available to Member States under the Treaty on the Functioning of the European Union and harmonising acts of EU food law do not sufficiently allow them to ensure the protection of public health in their territories. Although, theoretically, the scope of these instruments is extensive and broad, in practice, their effective application is very difficult. This is primarily due to the restrictive approach of EU institutions to examination of the proportionality of national measures. The jurisprudence of the CJEU in cases concerning restrictions on food trade indicates that priority is given to ensuring the free movement of goods, and thus a wide range of food products on the internal market and their competitiveness. The evaluation of provisional measures taken by Member States and notified to the Commission on the basis of derogation mechanisms and safeguard clauses also indicates a strict examination of the proportionality of national provisions. Meanwhile, restrictions on food trade adopted by the Member States have evolved over the years and currently seem to aim to actually ensure public health protection, rather than protect the domestic market from goods

imported from other Member States. Obvious infringements still occur, but in principle, Member States seem to invoke the general interest of public health protection in order to truly protect their populations.