

Rassegne

The future of food law: synopsis article and research agenda

Hanna Schebesta, Mirta Alessandrini, Francesco Cazzini, Silvia Rolandi, Alexandra Hillesheim, Ellen Vos, Martina Helmlinger, Adam Calo, Enrico Mezzacapo, Vincent Delhomme, Neal Fortin, Jorge Milian Gomez, Chiara Macchi, Michał Tracz, Francesca Coli, Valeria Paganizza, Marianna Vanuzzo, Carien de Jager, Tomar Pierson-Brown

1.- Introduction.

The Annual Conference of the Law Group at Wageningen University & Research (WUR) held in 2023 focused on 'The Future of Food Law'¹ –inviting scholars and attendees to reflect on the future of EU food law beyond the Farm to Fork Strategy.

The conference aimed to foster a scholarly legal debate on topics that have been overlooked in policy-centric discussions, and to facilitate an exchange of ideas on how to shape the legislative Framework for a Sustainable Food System. It sought to explore the future of EU food law beyond the Farm to Fork Strategy, reevaluating the legal architecture of the EU food system, its constitutional foundation(s) and applicable legal frameworks. The conference encouraged deeper engagement with, and critical appraisal of, the sustainability paradigm, as well as the implications of food systems thinking. It aimed to introduce novel approaches and perspectives, such as the One Health principle, and explore new methods, such as futurecasting and scenario-based analysis. Overall, the conference

sought to promote more robust legal-theoretical analysis, including justice and rights-based approaches.

In addition, the conference launched the Food Law Academics Network (FLAN)² with the goal of connecting legal academics working in the field. This initiative strives to foster critical and cooperative exchanges and offers an academic and independent voice in debates on food law and its future.

At that time, it was anticipated that by the end of 2023, the proposal of the European Commission's Framework for a Sustainable Food System would be published, thereby marking the end of the Farm to Fork Strategy policy process. The timing also provided an opportunity to consider the successes and limitations of the Farm to Fork policy process, and to ask how best to 'futureproof' the Farm to Fork Strategy, reflecting on what is to come (section 2).

An initial point of consideration revolves around the novel paradigm of sustainability, and how it can best be incorporated in the future EU food law (section 3). In this respect, a clear challenge for the future of food law is the fossilized nature of the food safety law. Stemming from 2002, the old architectural structures now appear outdated and inadequate to support the future of food law in the EU. This necessitates a deeper reflection about the foundations of food law in the EU treaties (section 4).

EU food law, embedded within a dynamic, evolving layer of international food law, also raises the question of a truly global approach to food law (section 5). Here, questions of food system governance arise (section 6). One strong development in food law is the agenda on business, human rights, and due diligence (section 7). From the conceptual standpoint, the One Health approach and new interpretations of animal welfare promise a holistic vision for future EU food law, moving away from anthropocentric approaches (section 8). Another key challenge for the future of EU food law concerns risk regulation, specifically how to reconcile and balance sustainability with innovation (section 9). At a conceptual level, it is clear that the language of

(¹) The Food Team of the Law Group at Wageningen University & Research convened the annual WUR Law Group conference on the 'Future of Food Law' on May 25 and 26 2023, which also launched the Food Law Academics Network (FLAN).

(²) At the time of writing, the FLAN has a membership of around 140 members; academics wanting to join the network can write to food.law@wur.nl.

food systems thinking is expected to bring significant changes to food law and regulation (section 10).

In the following sections, we present an overview of the main conference findings on these points and propose an attempt to identify and distill the main research questions that an agenda on the future of food law ought to address.

2.- *The future of food law in the EU*

This section considers the future of the Legislative Framework for Sustainable Food Systems, EFSA, and ideas on how to shape the future of EU food system law. It begins with the premise that the current fragmented regulatory landscape for food sustainability hampers the transition. Through its flagship Farm to Fork Strategy,³ the European Commission aimed to lay the foundation for a more integrated food systems law. The proposed Framework Legislation on Sustainable Food Systems (FSFS) is central to this strategy but has not been published yet. There is a possibility that any forthcoming proposal may be delayed until the next Commission term, or it might never be tabled at all.

2.1.- *The Framework on Sustainable Food Systems*

In the spring of 2023, the FSFS proposal still seemed to be on a steady course for publication. The European Commission delegate presented the main aspects of the planned FSFS proposal, outlining its guiding principles, its objectives and potential governance mechanisms.⁴ The latter included food policy councils, national food strategies, or exchange platforms via national focal points. The FSFS was centered around the concept of food environments, which

encompass several high leverage elements for promoting more sustainable consumer choices: the development of food sustainability-related information, sustainable food public procurement, and other possible legal interventions that would lead to a transition, including nudges for targeted measures by Member States. The paradigm shift in food law could involve moving from the precautionary principle to a 'do no harm' approach, aligning economic, ecological, and social sustainability dimensions. This holistic, multi-level approach represents a departure from traditional, siloed EU food law thinking and requires close collaboration among various DGs with shared competences in the FSFS domains. This would have signified a re-evaluation of decision-making processes within the European Commission and potentially beyond.

2.2.- *The European Food Safety Authority*

Delving deeper into the requisite changes, the European Food Safety Authority (EFSA) is another example where institutional change may be required to support the transition while staying operational.⁵ As an independent entity responsible for risk assessment and communication, EFSA's mandate lies in providing scientific guidance on food safety and supporting EU legislation. However, EFSA has been grappling with an increasing workload, exacerbated by the Transparency Regulation⁶ implemented in 2021. Additional developments, including the potential for future sustainability assessments, require adaptation and expertise buildup. Hiring constraints imposed by Member States have increasingly pushed EFSA to rely on publicly procured services and on national authorities, resulting in the decentralization of its tasks. Prof. Ellen Vos (Maastricht Centre for European Law) argued⁷ that this shift potentially undermines

⁽³⁾ EU Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system', COM(2020)381 final.

⁽⁴⁾ A. Alvizou, *Update on the Legislative Framework for Sustainable Food System* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

⁽⁵⁾ E. Vos, *The future of EFSA* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

⁽⁶⁾ Regulation (EU) 2019/1381 of the European Parliament and of the Council of 20 June 2019 on the transparency and sustainability of the EU risk assessment in the food chain and amending Regulations (EC) No 178/2002, (EC) No 1829/2003, (EC) No 1831/2003, (EC) No 2065/2003, (EC) No 1935/2004, (EC) No 1331/2008, (EC) No 1107/2009, (EU) 2015/2283 and Directive 2001/18/EC.

⁽⁷⁾ E. Vos, A. Volpato and G. Bellenghi, *Independence and transparency policies of the European Food Safety Authority (EFSA)*, in Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies, 2023, pp. 1-106.

transparency, accountability, and the agency's independence, sparking debates and concerns about conflicts of interest. The challenges facing EFSA are also institutional, manifested by Member States' impact on managing boards, working groups, and committees. Prof. Vos thus suggested that EFSA improve its transparency and independence standards by establishing a network of EFSA branches in each Member State. She also advocates for a new framework for science advice and policy-making to mitigate Member State political influence in scientific assessments, while keeping EFSA operational in view of its growing tasks.

2.3.- Research agenda

The FSFS proposal is poised to give momentum and direction to the future of food systems law. Building on the foreseen components of the proposal, several future research questions arise: Will the FSFS as designed serve as a strong basis for food systems law in the EU in terms of a harmonized, mainstreamed sustainability definition? In the absence of an FSFS, how will the obvious sustainability gap in the current food safety oriented system be addressed? What impact should sustainability have on the precautionary principle, which has thus far served as the guiding principle of food law in the EU, and how will that shift the role of EFSA? How can EFSA stay operational in the face of current and future challenges brought forth by the transition, while also reducing its susceptibility to conflicts of interest that may be intensified by this transition? How can a science-for-policy approach be integrated more deeply into the work of the agency to ensure its effectiveness in a redesigned food system law landscape?

3.- Sustainability and beyond sustainability

The concept of sustainability is a major driver for change regarding food policies and legislations. It is commonly understood to encompass three dimensions – economic, social and environmental, although arguably this understanding might be considered

insufficient to transform the food system in a holistic manner. The conference combined perspectives on sustainability in EU law, particularly influenced by the EU Farm to Fork Strategy, with perspectives which delved deeper into more profound concerns related to sustainability. A broadly accepted standard of sustainability is food labeling, which was discussed with reference to learning from green labelling practices. Furthermore, the notion of food environments provides a more encompassing vision on sustainability strategies as they go beyond consumer choice. Finally, sustainability has wider implications. Examples include the issue of social sustainability and the essential role of people working in agriculture, or Alternative Food Networks (AFN) as a form of de-commodification that looks at the system as a whole in a sustainable manner, which in itself may be inherently counter-regulatory.

3.1.- Beyond the Farm to Fork Strategy

The EU Farm to Fork Strategy represents an important attempt to implement the sustainability concept across multiple levels within the EU food systems. Dr. Hanna Schebesta (Wageningen University and Research)⁸ discussed the potential role of the Sustainable Food Systems Law in this effort, highlighting some unresolved challenges. These include, for instance, addressing the institutional and legal architectural embedding in the general food law, reconciling the safety and sustainability paradigms, and the ambiguity of the sustainability goal. For the introduction of the new legislation (when and if it happens), alignment with the CAP 2023-2027 would be necessary. However, the novel conceptualisations of food as a common good and food systems thinking will continue to have far-reaching implications for food regulation at both national and EU level. Here, room also needs to be made for Member States' experimentation and regulatory sandboxes to harness and consolidate successes at the EU level in the second stage.

Since sustainability is not a clearly delineated policy mandate, future regulation needs clear policy goals and legally workable definitions, as well as further institutionalization. Above all, viewing sustainability as

⁽⁸⁾ H. Schebesta, *Beyond the Farm to Fork Strategy* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

a process necessitates conceiving the EU sustainable food system transformation as a process that extends into a second policy phase beyond the Farm to Fork Strategy, with appropriate legal commitments to this second, post-Farm to Fork phase of *sustainabilization* of the food system.⁹

3.2.- Sustainable food information

One tangible approach to addressing sustainability and its definition is through the lens of food information provided to consumers, where information serves as a means of communication about sustainability. The FSFS had indeed also promised such a sustainable food information framework. Sarah Arayess, LL.M. and Dr. Alie de Boer's (Maastricht University) research¹⁰ on the challenges of negotiating food labels offers a valuable lesson for efforts to create legal standards for sustainable food. Dr. de Boer began by stating that food labels influence decisions between different food products; however, consumers cannot individually determine the sustainability of a product. Therefore, food labels can be useful for consumers. Nonetheless, the absence of a unified definition of sustainability leads to questions regarding the sustainability of food products. According to de Boer, products that were actually shown to be sustainable had 'green claims' (or messages in commercial communication that have a positive/no impact or are less damaging and show improved impact over time). Nevertheless, the lack of a sustainability definition applicable to the food sector results in a high level of legal uncertainty, leaving room for companies' interpretations and eventually leading to Member States providing guidelines, as occurred in the Netherlands, where the ACM has issued guidance on how to handle sustainability claims. In the context of the Dutch situation, there is guidance from the ACM on managing sustainability claims and advertising codes have been developed. In this regard, de Boer argued that the future of sustaina-

bility claims should be evidence-based, and the effectiveness of new directives remains to be seen. Similarly, other sustainability aspects are so far covered only to a limited extent, while a holistic approach to sustainable foods should also be considered.

An emergent concept in the regulation of food systems is the relevance of food environments. The FSFS draft was likely to draw heavily on this notion in order to create a more encompassing regulatory environment. Food environments go beyond consumer choice and highlight the coercive nature of food situations. Prof. Anniëk de Ruijter (University of Amsterdam)¹¹ shared her research based on the Netherlands' City Deal, where five municipalities were analyzed to assess how law can enhance health and identify the legal constraints within the urban food landscape. Urban zoning laws are instrumental in regulating the food environment and thereby public health. Given that limited access to healthy food options can contribute to increased obesity rates and unhealthy food environments, the study evaluated a street in Amsterdam where 78% of the food offerings were deemed unhealthy. Such studies prompt legal discussions on crucial questions: at what level of availability of (un)healthy foods in an environment do we determine that healthy choice is compromised and government intervention is necessary? And at what point is individual choice hindered, guiding what can (or cannot) be regulated?

3.3.- Social sustainability

In exploring the various dimensions of sustainability, Prof. Irene Canfora's (University of Bari)¹² presentation, based on a contribution drafted together with Prof. Vito Leccese (University of Bari), highlighted the element of social sustainability and the essential role of people working in agriculture.¹³ Accordingly, the Farm to Fork Strategy must consider the different facets of sustainability, ensuring all actors and stages

⁽⁹⁾ H. Schebesta, *How to Save the Farm to Fork Strategy: A Two-Phased Approach*, in *EFFL*, 2023, 18, 4 pp. 231-238.

⁽¹⁰⁾ A. de Boer, *How to navigate the tricky landscape of sustainability claims in the food sector* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

⁽¹¹⁾ A. de Ruijter, *Food environment...beyond consumer choice* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

⁽¹²⁾ I. Canfora and V. Leccese, *Social sustainability as milestone for a Sustainable Food System: the essential role of people working in agriculture* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

⁽¹³⁾ Please refer to I. Canfora and V. Leccese, *La sostenibilità sociale nella nuova PAC*, in *Riv. dir. agr.*, 2022, 2 pp. 110-141.

within the food system are acknowledged. This approach is reflected in the Common Agricultural Policy (CAP) 2023-2027, which introduces the concept of social conditionality and sets forth a limited framework of rules regarding social conditionality. The example of Italy, where the issue of undeclared labour has been addressed by national legislation, was used to illustrate this point. In 2016, Italy enacted a law concerning the criminal offense of worker exploitation, underscoring the necessity of establishing legal frameworks for the implementation of social conditionality within EU Member States and fostering conditions that reward socially responsible practices in agriculture.

3.4.- *Alternative roads to sustainability*

Exploring alternative perspectives on sustainability, Prof. Alessandra Arcuri (Rotterdam University)¹⁴ discussed the role and potential of Alternative Food Networks (AFNs) in fostering a more equitable and ecologically sensitive food system. Prof. Arcuri highlighted how AFNs are inherently counter-regulatory, enabling them to challenge established democratic practices and introduce new practices of accountability. They also counteract exploitation by incorporating non-industrialized and small-scale farming methods. AFNs often operate under manifestos or shared rules/principles, promoting a de-commodified view of food. Overall, AFNs represent a novel, bottom-up approach to food systems, suggesting that such practices should become integral to the current food system framework, but may struggle to integrate into dominant legal frameworks.

3.5.- *Research agenda*

The concept of sustainability has been successful in organizing policy and the direction of food law. However, the ambiguous and multidimensional nature of sustainability poses a significant challenge, which raises the crucial question of how sustainability for the law can be defined and operationalised. A more critical examination of efforts to transform the food system

suggests that moving beyond the conventional boundaries of sustainability is necessary for enacting truly transformative changes. If the concept of sustainability is reduced to a superficial understanding that merely touches on social, economic, and environmental concerns, it becomes too easy for actors to claim sustainability with the right framing. Experience with long-standing environmental regulations shows that vague principles are often co-opted by powerful entities, leading to outcomes that contradict the original legal intentions. One solution to this issue is the development of robust metrics for sustainable food that span the production and consumption cycle and are resistant to dilution or co-optation. Should new certification schemes arise from future food law initiatives, it is crucial that these efforts draw lessons from the failures of past green labelling projects. An alternative approach advocates for identifying points of structural change that foster sustainability as an emergent process, rather than as a neatly defined concept.

Efforts aimed at de-commodifying food production and consumption, creating pathways for greater autonomy for smallholder farmers and enterprises focused on community health, advocating for legal recognition of the right to food, and enforcing evidence-based modifications to the food environment, all present opportunities to advance beyond viewing sustainability as the ultimate goal.

4.- *Foundational treaty perspectives*

The legal architecture of the EU food system is significantly influenced by its historical origins and the constitutional foundations laid out in the EU Treaties. The Common Agricultural Policy (CAP), Competition Law, and the Internal Market each have distinct legal bases in the Treaties, and often pursue autonomous policy rationales.

4.1.- *The Common Agricultural Policy (CAP)*

Much has been discussed about the new CAP and its ties with the Farm to Fork Strategy and the Framework for Sustainable Food System (FSFS) initiative. The

⁽¹⁴⁾ A. Arcuri, *Food De-Commodification as Sustainability* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

FSFS law was unlikely to have significant direct consequences for the way food is produced, as the principles of sustainability are already enshrined in the CAP regulations. Prof. Alan Mathews (Trinity College)¹⁵ reflected on how the CAP could be designed to promote the necessary changes needed at the farm level, considering that changes in food law will be downstream and have insignificant impacts on primary production. As such, the CAP objectives address sustainability by strengthening environmental protection, contributing to climate change mitigation and adaptation, fostering sustainable development and efficient natural resource management, and contributing to halting and reversing biodiversity loss. Indeed, the significant gap still lies in the poor implementation and ambition of the CAP measures. This is particularly evident in the National Strategic Plans, from the soft and easily bypassed environmental conditionalities for direct payments, or the poor ambition shown with Eco-Schemes, to the stubborn defense of the hectare-based income support mechanism. This maintains a hazardous status quo that prevents the much-needed actions to halt the most harmful agricultural practices, such as subsidies to intensive livestock farming.¹⁶ Overall, Prof. Mathews asserted that promoting more sustainable agricultural practices necessitates a variety of instruments, among which CAP subsidies are merely one component. The Sustainable Food Systems (FSFS) law will primarily impact primary producers in the food chain indirectly by influencing the demand for their products and will not have significant direct consequences for the methods of food production on farms, as sustainability principles are already integrated into CAP objectives. Additionally, there could be further indirect effects through the framing of the external dimension in the proposed legislation.

One of the most interesting questions is how a sustainable food law would aim to fulfill its role as an 'umbrella law', guiding coherent actions across other integrated sectoral areas in need of reform, such as

pesticides, soil health, nature restoration, industrial emissions, and many others.

4.2.- Competition law

Another specific iteration of sustainability appears in the area of Competition Law. Dr. Pauline Phoa (Utrecht University)¹⁷ discussed how competition law addresses sustainability, specifically within the context of the Netherlands. Despite the Netherlands' extensive use of technology in agriculture, challenges like reducing nitrogen emissions persist. To tackle these issues, a Dutch 'agricultural agreement' focusing on earning capacity was negotiated among stakeholders. This led to a series of agreements aimed primarily at enhancing earning capacity, including strategies to distribute increased production costs among supply chain partners, minimum price agreements, and the establishment of sustainability standards and quality schemes to foster demand for sustainable products. EU competition law is also evolving, with developments such as the EU Commission's horizontal guidelines and Article 210a CMO, which introduces a new exemption for sustainability. While competition law is just one of many instruments to achieve sustainability, its integration with other legal domains, such as food safety laws, is crucial.

4.3.- The Internal Market

Food sustainability raises fundamental questions also about several key principles and concepts within EU Internal Market law. Dr. Vincent Delhomme (Leiden University)¹⁸ argued that given the evolving landscape of food systems, there may be a need for a revised approach to align with these changes. For instance, the principle of proportionality, which has often been criticized for its rigidity and its singular focus, might require reevaluation. At the same time, the application

⁽¹⁵⁾ A. Mathews, *Common Agricultural Policy* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

⁽¹⁶⁾ Ibid.

⁽¹⁷⁾ P. S. Phoa, *Sustainability in Competition Law* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

⁽¹⁸⁾ V. Delhomme, *A new Internal Market paradigm* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

of free movement rules and proportionality allows for a proper evaluation of the merits of measures that, under the guise of sustainability, may serve alternative economic or protectionist interests. This issue becomes particularly evident when considering 'buy national' rules. While promoting local consumption may offer numerous advantages, it cannot automatically be assumed that domestically produced goods are inherently more sustainable or virtuous than imported ones. The role of private actors in this context, especially food retailers, could be significant, even though they currently operate beyond the scope of the free movement of goods provisions. Harmonisation, a critical tool for integrating non-economic concerns into internal market law, must demonstrate greater sensitivity to local considerations. It should accommodate the diversity of approaches to sustainability and permit experimentation with solutions at the national level. However, this poses a constitutional challenge: reconciling flexibility and diversity with the objective of removing trade barriers, a prerequisite for the EU to exercise its harmonisation powers.

4.4.- Food heritage in the Internal Market

The incorporation of values beyond market integration has always posed a challenge in EU Internal Market law. Dr. Floris de Witte (London School of Economics)¹⁹ explored the concept of food heritage within the Internal Market.²⁰ The European Union, with its rich culinary traditions and diverse food heritage, reflects unique national and local lifestyles. However, the prevailing framework of EU Internal Market law, founded on principles of uniformity, free movement, and market-driven rationality, seems ill-equipped to protect this valuable heritage. It has difficulty capturing and expressing the complex aspects of heritage, including its spatial, temporal, and representative dimensions. Within the sphere of EU law, there is a varying degree of receptiveness to claims related to food heritage. The Court of Justice, through its jurisprudence on the free movement of goods, often subjects culinary heritage to the typical dynamics of the internal

market, potentially endangering its preservation. In the context of GMO (Genetically Modified Organism) regulation, there is a recognition of food heritage as intertwined with ecological considerations. In cases dealing with geographical indications, where EU law makes its most direct effort to preserve food heritage, it struggles to understand its evolving nature, viewing it instead through the narrow perspectives of marketization and patrimonialization.

To make EU law more responsive to the diverse stakeholders, interests, and representations involved in preserving food heritage across Europe, the key lies in reemphasizing the local dimension. By reorienting the focus towards local context and involving local communities, we can bridge the gap and cultivate a more holistic approach to conserving and appreciating the complex nature of food heritage within the European Union. This reorientation towards the local allows for a deeper understanding and appreciation of the unique culinary traditions and practices, ensuring they are preserved in a manner that respects their origins and significance.

4.5.- Research agenda

The EU food system is founded upon two main pillars: the internal market and the Common Agricultural Policy (CAP). These two pillars are underpinned by distinct principles. The internal market is rooted in the concepts of open markets and free competition, while the CAP operates as a highly regulated field where traditional market rules are not applicable. Farmers derive a significant portion of their income from direct payments from the Union budget. Nevertheless, both the CAP and the internal market were conceived as mechanisms to enhance productivity and bolster economic output. Progressively, environmental, health, and social considerations have been incorporated into their operations.

What appears from the various presentations is that the integration of sustainability concerns into the legal framework of the CAP and the internal market is not an entirely new development. Addressing climate

⁽¹⁹⁾ F. de Witte, *Food Heritage in the Internal Market* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

⁽²⁰⁾ F. de Witte, *You are what you ate: food heritage and the EU's internal market*, in *EFFL*, 2022, 47, 5 pp. 647-665.

change and safeguarding natural resources, as well as sustaining the rural economy and landscapes across the EU, have long been among the objectives of the CAP. Sustainability considerations are already being integrated into competition rules and their enforcement by the European Commission. The Internal Market is not exclusively a domain of deregulation; harmonisation serves as a potent instrument for re-regulating the market in a more sustainable manner. Much can be accomplished within the existing legal framework of the EU without the need for changes to the Treaties.

However, in a time when a new food system is a priority, one may question whether a more substantial overhaul is required. To what extent can rules originally designed for enhancing market integration and production accommodate concerns when the issues of degrowth and sober consumption are becoming increasingly paramount? Sustainability, in many aspects, may demand action at a more localised level, greater flexibility for national actors, and a heightened openness to local concerns. This poses a challenge to an Internal Market constructed on the foundation of uniformity.

The significant shift in lifestyles necessitated by health and environmental challenges may face resistance from individuals, particularly if the changes are perceived as being imposed from the EU level. As rightly said by Dr. de Witte, food law also tells us a story about EU law more generally, and its lack of sensitivity of what it is like, or feels like, to live 'under' EU law. Innovative approaches that incorporate citizen concerns more effectively need to be considered.

5.- International law

What role has international law played, can play, and will play in relation to food systems? In the academic debate, there has so far been a lack of specific attention to the impact of this area of law on the foundation and transformation of food systems. In this context, it is important to reflect on the distinct relevance of international law and the relationship between the

European Union and international legal frameworks, as well as their mutual influences.

5.1- International food law

Amidst numerous uncertainties and criticisms regarding the nature and functioning of international food law, Prof. Michael Roberts (University of California Los Angeles)²¹ gave his view on alternative future pathways. The trajectory begins with lingering questions about what constitutes a global food system and the manner in which it should be governed. Foundational inquiries delve into the legal dimension, exploring the demarcation line of international food law, its sources, evolution, and systemic implications. In identifying these key issues, Prof. Roberts conducted a brief study of the Food and Agriculture Organization (FAO), raising numerous questions regarding the FAO's organization and governance, as well as the role of law in this debate. These inquiries about the institutional aspects of the FAO lead to more in-depth reflections on the contestation of ideas and current values present in existing food systems. The prevailing regime of international rules has promoted industrialized agriculture and manufactured food. In response, we observe contestations in the realms of human rights (right to food), food security, and food sovereignty. This brings us to the overarching issue: Is there a (food) system in which we can address these challenges while maintaining the current framework? In connection with this open question, Prof. Roberts inquired about the role of international law in this scenario.

5.2.- Global food law

These conclusions on regime complexity resonate with the presentation given by Prof. Ferdinando Albisinni (Universitas Mercatorum Rome)²², but with a more evident emphasis on the interlinkages between the European and international (global) dimensions, Prof. Albisinni refers to 'the bricks and stones of European and global food law'.²³ What do we mean by

⁽²¹⁾ M. Roberts, *Alternative Future Pathways* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

⁽²²⁾ F. Albisinni, *Bricks and stones of European and Global Food Law* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

⁽²³⁾ Please refer to F. Albisinni, *Bricks and stones of the GFL laboratory*, in q. Riv. www.rivistadirittoalimentare.it, n. 1- 2016, p. 4-5.

bricks and stones? The overall idea is that, in this area of law, the same elements acted in some cases as obstacles to legal developments, and in other cases as foundational materials for a new legal framework. According to Prof. Albisinni, the European approach to food law is systemic, existing within a global regulatory framework. European food law emerged as a unique area of regulation, showcasing a distinctive method of rule-making where international, regional, and national levels intersect. It is a domain where private and public responsibilities converge through vertical and horizontal cooperation. Nowadays, the European dimension alone appears insufficient to capture the complexity of the real world and is compelled to consider a global dimension. National laws evolve to have extraterritorial effects, becoming applicable in different countries. Looking at future trends, Prof. Albisinni notes that while traditional discussions focused on food security and safety, current conversations revolve around food sovereignty. These evolving forms of thought foster dialogues between local and global food laws.

5.3.- WTO law

If the previous presentation highlighted the growing influences between the European and the international framework, Prof. Bernard O'Connor's (O'Connor and Company) presentation²⁴ focused on how reconciling ambitious domestic (EU) sustainability objectives within the context of World Trade Organization (WTO) law. The discussion begins by questioning whether governments have the right to set standards. Prof. O'Connor asserts that governments not only have this right but also have the responsibility to set standards that reflect their citizens' needs or ambitions as outlined in their constitutions and in international law, for instance, under human rights obligations. The EU, with its significant influence, would fail to meet its obligations to its citizens if it did not strive to achieve the highest standards possible within the framework of the EU Treaties. The presentation proceeds to examine the potential external, trade-related consequences of EU standards, followed by an exploration of the nature of the

standards themselves. It then addresses how EU institutions manage to navigate WTO commitments. Prof. O'Connor suggests that the EU is obligated to continue pushing the boundaries on how to interpret the external constraints that EU citizens have agreed to impose on their sovereignty, both in EU Treaties and in international agreements.

5.4.- Research agenda

Many questions raised from the perspective of international law extend beyond the international dimension alone, touching upon the influences and boundaries that exist between the EU and the international legal framework. One of the core issues concerns the EU's ability to impose production and processing standards on goods in third countries. This practice is not unique to the EU; other countries around the world have implemented similar policies and strategies. However, the limits of such actions are not entirely clear, despite some common ground being established in World Trade Organization (WTO) dispute settlement decisions, such as US — Tuna II and US — Shrimp. By imposing standards, the EU may achieve internal benefits, but this can also lead to unavoidable negative externalities. There exists a necessity for a more thorough investigation into the legal compliance of these initiatives under international obligations, especially in a context where unilateral measures are becoming increasingly prevalent.

Many open issues broadly investigate the contribution of international law to the functioning of the food system, including questions about institutional architecture and governance. In this context, the role of the Food and Agriculture Organization (FAO) is under scrutiny; should this body inspire and direct global actions and influence other international organizations? The section also highlights problems with legal sources. Some of these issues are more technical, such as clarifying and refining concepts and principles, while others are more political in nature, such as setting common targets within the international community. One of the main outcomes of the three presentations is the intrinsic polarization of interests in many

⁽²⁴⁾ B. O'Connor, *Ambitious domestic objectives for sustainability in the context of WTO law* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

areas of international food law. The relationships between trade versus food security and food sovereignty versus globalization contain many unanswered questions and unregulated aspects.

Alongside sectorial or specific questions, there is an overarching one that deserves attention and could contribute to partially answering the aforementioned issues: Should we change or create a different framework for international food law as the main organizing framework? While attempting to answer this complex question, we should not overlook the foundational characteristics and limitations of international law in general, such as the lack of enforcement and accountability mechanisms and the fragmented nature of this area of law.

6.- Food system governance

From the perspective of food systems governance, we take a systemic look at the food system – here, the conference contributions highlighted the missing perspectives and the missing voices in food system governance. The future of food law is poised to confront a myriad of complex challenges, which call for a thorough re-evaluation and reformulation of its principles and approaches.

6.1.- Democratization of food safety

Prof. Neal Fortin (Michigan State University)²⁵ discussed the democratization of food safety, particularly in the context of the United States. In the United States, food is partly regulated through tort law and personal responsibility, and food safety represents a classic case of market failure. For free market forces to function properly in the realm of food safety, consumers would need to be aware of the relative safety of foods before making purchases, allowing them to buy the level of safety they desire. However, determining the safety of food before purchase is impossible for consumers. Pathogens and other food safety hazards can be invisible, odourless, and tasteless. Furthermore, there is no reliable indicator for food safety. Although consumers are interested in purchasing safer food,

food companies find it challenging to effectively market improved food safety. A significant barrier to marketing food safety is that it heightens consumers' awareness of food safety failures, which can backfire. Two traditional remedies for food safety market failures are personal injury lawsuits and government regulation. Both can offer some correction for market inefficiency, but they are inadequate. Lawsuits have limited effectiveness in holding manufacturers accountable for food safety failures because establishing tort liability is rare. The manufacturer of harmful food is often not identified due to the lack of proof of causation. Additionally, tort liability is reactive and therefore offers limited preventive benefits. Government regulation provides significant preventive correction but also has limitations. Governmental systems face constraints in resources, struggle to keep pace with changes in complex international supply chains and evolving food manufacturing practices, and encounter resource and structural limitations.

The inadequacy of personal injury lawsuits and government regulation is evident in the scale of the problem, as seen in the number of foodborne illnesses and their economic costs. Every year, millions of illnesses and billions of dollars in economic costs occur in the United States alone.

Prof. Fortin then proposed granting citizens a right of action under food law to establish a trilateral regulatory system. A system with three supports—a 'three-legged stool'—is significantly more robust than one with only two supports. A private cause of action would enable enforcement in cases of government inaction, which can occur due to resource limitations or agency capture. By granting a right of action, citizens are empowered to take action when agencies fail to do so. Additionally, this right would allow businesses to address situations where competitors' violations result in unfair business advantages.

Government inaction may also stem from agencies reaching a balance between private and government interests. However, Prof. Fortin argues that citizens, not their bureaucratic representatives, embody the public interest. The courts can then ensure that enforcement aligns with a republican determination of the public interest, rather than a balance of private and bureaucratic interests.

⁽²⁵⁾ N. D. Fortin, *Democratizing Food Safety* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

6.2.- Sustainability, agency and governance as food principles

Prof. Jorge Milian Gomez (Vrije Universiteit Brussel)²⁶ proposed a reconsideration of existing food law principles. While current food law encompasses principles such as food safety, risk analysis, and consumer protection, it is imperative to include principles of sustainability, agency, and governance, all within a human rights approach framework.

Sustainability, as a principle, is a fundamental pillar of the future of food law. This principle aims to ensure the long-term capacity of food systems to provide food security and nutrition for current generations without compromising the needs of future generations.²⁷ This approach involves several critical dimensions: environmental management, which includes responsible resource utilization and addressing climate change, is paramount.²⁸ Equally crucial is social welfare, focusing on fair access to food resources and reducing inequalities. Economic viability within the food industry is vital for ensuring long-term stability. Additionally, embracing circular economy principles and waste reduction are essential steps in minimising food waste.

Consequently, the principle of agency in food law refers to the ability of individuals and communities to intervene in the definition of their food systems.²⁹ This principle implies ensuring access to resources, active social participation and decision-making in food-related matters, preserving traditional knowledge and empowering local food systems. Coherent public policies prioritising community participation and preserving cultural and traditional food practices are essential for realising this principle. Advocacy mechanisms must also be supported to amplify the voices of margi-

nalised communities within the food system.

In light of the above, the principle of governance in food law revolves around the effective management and organization of resources by states through public policies, with a balanced consideration of social, economic, and environmental factors.³⁰ This principle extends to the institutional frameworks governing food systems. Transparency and accountability in decision-making processes are vital to ensure that public policies are formulated with the interests of society and the environment in mind. Stakeholder engagement, coordination, and collaboration among various actors in the food system must generate comprehensive and practical solutions. In addition, solid legal mechanisms must be developed to ensure compliance with food regulations.³¹

However, the current paradigm of food law has primarily focused on food trade, quality, and consumer protection, influenced by the commodification of food. The global food crisis, exacerbated by events such as the COVID-19 pandemic and the Russia-Ukraine conflict, has highlighted the inadequacies of this approach.³² Food law must fundamentally shift its principles and priorities to address these pressing challenges. It must change from a consumer-centred approach to one based on the human right to food. This shift means prioritising the realisation of the fundamental right to adequate food for all individuals, regardless of their economic or social situation.

Therefore, food law's future is fraught with complexities and challenges that call for a reassessment of its guiding principles. Given this, adopting the principles described above within a human rights framework is imperative to ensure the long-term viability of our food systems and the equitable distribution of food resources. By incorporating these principles into food law,

⁽²⁶⁾ J.F. Milian Gomez, *Bringing Sustainability, Agency and Governance as Food Law Principles: A Human Rights Approach* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

⁽²⁷⁾ Please refer to High Level Panel of Experts, *Food security and nutrition: building a global narrative towards 2030*, 2020 <https://www.fao.org/3/ca9731en/ca9731en.pdf>.

⁽²⁸⁾ J. F. Milian Gómez and Y. Delgado Triana, *Sustainable Management of Environmental Risks in Agricultural Production: Ensuring the Right to Food*, in *Global Jurist*, 2022, 22, 3 pp. 1-19.

⁽²⁹⁾ Please refer to Committee on World Food Security, *Background note for informal discussion #4: Right to Food; Gender; Agency*, 2020 [https://www.fao.org/fileadmin/templates/cfs/Docs1920/Agroecology_an_other_innovative/ 4 June 2020/Background document 4 June Agroecology.pdf](https://www.fao.org/fileadmin/templates/cfs/Docs1920/Agroecology_an_other_innovative/4_June_2020/Background_document_4_June_Agroecology.pdf).

⁽³⁰⁾ M. V. Whittingham Munévar, *¿Qué es la gobernanza y para qué sirve?*, in *Revista RAI*, 2010, 219-235.

⁽³¹⁾ Please refer to M. Fakhri, *Policy Brief Last chance to make the Food Systems Summit truly a 'people's summit'*, 2021 https://derechoalimentacion.org/sites/default/files/pdf-noticias/Policy_brief_SR_FOOD.pdf.

⁽³²⁾ F. Milian Gómez, *Rethinking the Human Right to Food from a Single Perspective to a Four-Fold Legal Interpretation*, in *Journal of Human Rights Practice*, 2023, pp. 1-14.

we can pave the way towards a fairer, more sustainable, and resilient global food system that meets the needs of present and future generations.

6.3.- Research agenda

The main research questions emerging from a systemic and governance perspective concern the inclusion of elements that are ignored or underrepresented; for instance, in the face of potential governmental inaction or capture by industry interests, could a citizens' right of action under food law create a trilateral regulatory system, thereby fostering a more democratic food system governance? Alongside institutional and participatory questions, substantive queries arise: How can food law meet the challenge of reformulating its principles and approaches? How can it incorporate the novel principles of sustainability, agency, and governance, all within the overarching framework of a human rights approach?

7.- Business, Human Rights and Due Diligence

The impact of business conduct on human rights and the sustainability transition is currently undergoing both research and regulatory developments that create vast potential for further analysis in the future. The conference tackled these issues from different but interconnected perspectives, summarized below.

7.1.- Short Food Supply Chains

Short food supply chains are a specific type of business, with specific implications for business actors, as well as for the sustainability of food systems and for the protection of human rights. In particular, as presented by Dr. Mirta Alessandrini (Wageningen University and Research),³³ short food supply chains appear to lead to local economic development, social

cohesion and community resilience, environmental sustainability, and food sovereignty.³⁴ What can be observed is the evolution of the regulation of short food supply chains through the CAP reforms, which demonstrated that the CAP has undergone a renationalization process and that short food supply chains have transitioned from being an end to becoming a means to achieve sustainability objectives. Moreover, despite the potential role they could play in the transition towards sustainable food systems, short food supply chains do not play a significant role in the Farm to Form Strategy. Similarly, as presented by Dr. Adam Calo (Radboud University), proposed agricultural targets in policy frameworks tend to omit the way current land ownership and transfer dynamics militate against the feasible expansion of AFNs. Conflicting entitlements like the human right to property and the need to diversify agricultural landowners present a brewing tension in the future of food law.³⁵ Likewise, a comparative analysis of food safety and regulatory approach to short food supply chains reveals a disconnection between food safety law and agri-food law. In particular, short food supply chains are currently too ill-defined to be operationalised, and CAP tailor-made measures are voluntary-based, as there is a lack of harmonisation of rules at the EU level.

7.2.- Due diligence

Binding corporate due diligence obligations are becoming part of the EU's regulatory framework, aimed at ensuring the sustainability of food systems, among others. Attorney-at-law Michał Tracz³⁶ discussed the European Commission's (EC) horizontal proposal for a Directive on Corporate Sustainability Due Diligence, which is still under discussion, with the final text expected to be adopted in 2024. Meanwhile, the Regulation on deforestation-free products, which concerns the placement on the EU market and the export from the EU of certain commodities and products

⁽³³⁾ M. Alessandrini, *Regulating Short Food Supply Chains in the EU* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

⁽³⁴⁾ M. Alessandrini, *Regulating Short Food Supply Chains in the EU*, Springer (Forthcoming).

⁽³⁵⁾ A. Calo et al, *Achieving Food System Resilience Requires Challenging Dominant Land Property Regimes*, in *Frontiers in Sustainable Food Systems*, 2021, 5, pp. 1-7.

⁽³⁶⁾ M. Tracz, *Due Diligence obligations - a universal legal solution for assuring the food systems' sustainability?* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

associated with deforestation and forest degradation, is already applicable and thus can be analyzed. A review of this landmark regulation reveals that certain typical mechanisms associated with corporate due diligence obligations can be identified. In this context, the following mechanisms are particularly noteworthy: the imposition of duties related to the collection of specific information, data, and documents; risk assessment measures; risk mitigation measures; and the public reporting on due diligence systems. Due to the transnational nature of risks such as deforestation, the regulation aims ambitiously to impact the socioeconomic reality outside the EU. While, at the moment, there seems to be no significant alternative being considered to the approach of corporate due diligence legal obligations, the actual potential of this type of regulation to enhance the sustainability of food systems remains unclear.

7.3.- *Responsible Business Conduct of Food Retail Companies during the war: the case of Ukraine*

Armed conflicts can have devastating impacts on food systems, and consequently, on the right to food of affected communities. This has been evident in the case of the war in Ukraine, as analysed by Dr. Olena Uvarova and Dr. Nadia Bernaz (Wageningen University and Research)³⁷. The case underscores the responsibility of private corporations that play key roles in the food supply chain. Once the war in Ukraine began, massive lines were observed outside food stores due to limited access to food and disruptions in the relevant supply chains. Several factors affected food access, one being that food retailers, private companies, interrupted the provision of food supplies. In this context, state intervention to ensure access to food was very limited. Many international companies ceased operations during the early days of the war, whereas local SMEs proved to be more adaptable. Some companies implemented Corporate Social Responsibility (CSR) initiatives rooted in charity but did not acknowledge their responsibility to respect the right to food as part of the international normative framework represented by the UN Guiding Principles on Business

and Human Rights (UNGPs). According to the UNGPs, companies operating in contexts of armed conflict should perform heightened Human Rights Due Diligence (HRDD). It can be argued that this is especially true when their operations are crucial to ensuring access to food for affected communities. The role of companies in minimising the impact of conflicts on human rights should be considered.

7.4- *Research agenda*

In relation to short food supply chains, there is a need for a new conceptualisation within the EU agri-food law, aiming to fill a gap in the existing Common Agricultural Policy (CAP) literature and to devise a framework that includes all dimensions of short food supply chains and challenges the regulatory vacuum.

Corporate due diligence obligations, imposed by law to impact the sustainability of food systems among others, also present a number of open questions for the future. One question is whether multiple due diligence regulations will bring more legal certainty for stakeholders or instead create potential loopholes. Another question concerns the ambition of these regulations to impact the socioeconomic reality outside the EU. It remains to be seen whether this potential will be limited by challenges in monitoring companies' conduct by competent public authorities based in the EU and operating mostly within EU jurisdictions. Further research is also needed on whether the emerging reporting and due diligence obligations, as well as new procedural rights for NGOs, will result in increased pressure from civil society on corporate actors.

The role of corporations in conflict contexts requires further investigation, acknowledging that, especially during national emergencies that limit state action, corporations controlling access to essential services and products, including food, share a responsibility to some extent to fulfill the human rights of affected populations. This necessitates a deeper and more nuanced understanding of the corporate 'responsibility to respect' as formulated by the UN Guiding Principles on Business and Human Rights (UNGPs).

⁽³⁷⁾ O. Uvarova and N. Bernaz, *Responsible Business Conduct of Food Retail Companies during the war: the case of Ukraine* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

8.- One Health and Animals in food law

The importance of adopting a holistic approach to health in the future of food law has become particularly evident in the post-Covid-19 era. The health challenges posed by population growth and urbanization, human and animal mobility, international transport, human migration patterns, climate change, and the globalization of livestock and wildlife food value chains constantly threaten the resilience of the food system. Indeed, the need to simultaneously address the transition to sustainability and ensure a high level of public health has been increasingly recognised by both scientists and the international community.

Therefore, food legislators have an obligation to consider human health and well-being, ecosystem health, and animal health and welfare in their actions toward sustainable and resilient food systems, recognizing their complex interrelationships. Their responsibility extends to effectively ensuring food safety, food and nutrition security, and the preservation, protection, and regeneration of the environment for present and future generations. This becomes even more urgent in a globally interconnected world facing multiple climatic, social, and economic challenges.

8.1- One Health

Born in the context of natural sciences, One Health has been discussed and implemented internationally since the early 2000s, mainly thanks to the efforts of international organizations such as FAO, WHO and WOHAI and, since 2021, UNEP (the so-called Quadripartite). In her presentation, Francesca Coli (Sant'Anna School of Advanced Studies)³⁸ showed that the application of One Health at the EU level is more recent, especially within the regulatory framework. The first EU definition of One Health dates back to 2017, contained in a policy document titled «A European One Health Action Plan against Antimicrobial Resistance». However, the first legal definition was included in Regulation (EU) 2021/522

(‘EU4Health Programme’), which defines it as «a multisectoral approach that recognizes human health is connected to animal health and the environment, and that actions to tackle threats to health must consider those three dimensions» (Article 2(5)).

Two trends can be observed in the EU legal and policy space regarding One Health: first, the increasing use of One Health in EU documents (e.g., legal acts, preparatory documents, Commission communications, staff working documents) over the years, especially after 2020; second, the increasing inclusion of One Health in legally binding instruments.³⁹ One Health is still predominantly seen as a policy tool, meaning it is more frequently used in policy documents than in legal acts. However, there is a trend toward change. For example, in 2019 and 2020, no regulations mentioning One Health are found, while in 2021 and 2022, there are a total of 8 regulations. These results confirm the growing importance of health as a horizontal issue to be mainstreamed across different EU policies and the tendency to broaden the scope of One Health by integrating it into sustainability challenges such as climate change, biodiversity loss, and pollution, to name a few. Regarding food legislation and policies, they still do not reflect this evolution and mention One Health in its ‘narrow’ connotation, i.e., only in the context of the fight against antimicrobial resistance (AMR). The Farm to Fork Strategy and its implementing acts are a case in point.

8.2.- Animals in food law

But it is not just the One Health approach that is underrepresented in the implementation of the Farm to Fork Strategy, and thus in the EU’s transition to sustainable food systems, as presented by Alice Di Concetto (The European Institute for Animal Law and Policy).⁴⁰ Actions to reduce the consumption of food of animal origin, driven by both animal protection and environmental concerns, also appear to be inadequately addressed. Although the Strategy recognizes the need to move towards a more plant-based diet and calls on the European Commission to revise EU farm

⁽³⁸⁾ F. Coli, *OneHealth* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023)

⁽³⁹⁾ F. Coli and H. Shebesta, *One Health in the EU: The Next Future?*, in *Journal on Law and Integration*, 2023, pp. 301-316.

⁽⁴⁰⁾ A. Di Concetto, *Animals in the EU’s Future of Food Law* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

animal welfare legislation, there is still a lack of regulatory mechanisms within food law to address animal welfare issues, inform consumers about the treatment of farm animals in agri-food supply chains, or inform them about the alternatives available to animal-based foods. Dr. Berger Richardson (University of Ottawa)⁴¹ showed in her presentation that the meat industry not only poses threats to animal welfare, health, and the environment but also incurs significant societal costs. In particular, meat processing stands out as one of the most dangerous manufacturing sectors, exposing vulnerable workers to occupational hazards that include physical harm and psychological distress. Despite these hazards, recent trends in food safety regulation show a shift toward outcome-based approaches in the oversight of animal slaughter operations. Recent data suggest that this type of regulation has even more negative side effects, especially when the performance outcomes achieved do not adequately address both worker safety and animal welfare.

8.3.- Research agenda

Therefore, a holistic understanding of health that includes human health and well-being, animal health and welfare, and ecosystem health has not yet been incorporated into the scope of food law. Adopting a systems thinking approach to health in food systems would be crucial for better aligning EU food legislation with the EU's stated sustainability objectives and for improving the coherence of EU food policy with agricultural, labour, climate, internal market, and trade policies. To this end, One Health should extend beyond the fight against antimicrobial resistance (AMR) in the EU's transition to sustainable food systems. It could serve as a valuable tool for ensuring access to safe and nutritious food, shifting consumer preferences towards a more plant-based diet, promoting sustainable agriculture and production, building the resilience of ecosystems and food systems, addressing poverty and

inequality, and improving animal welfare.

9.- Risk Regulation, sustainability and innovation, and the consumer

For more than 20 years, risk has been the main paradigm of the food regulatory structure: «Food law is aimed at the reduction, elimination or avoidance of a risk to health»⁴², as stated by the General Food Law Regulation. In recent years, the increasingly complex nature of food and its constitutive aspects-production, trade, marketing, and consumption-has given rise to several challenges. Alongside the risk regulation paradigm, food law also has a strong consumer protection component. A consistent challenge is how to accommodate the role of consumers in relation to sustainability and innovation.

9.1.- The Transparency Regulation and food innovation

A novel aspect of risk regulation was the emphasis on transparency. The Transparency Regulation of 2019, as presented by Dr. Marianna Vanuzzo (UNICATT)⁴³, amends the existing risk regulatory structures in the General Food Law Regulation. It requires information to be available during the risk assessment procedure, while the Authority should disclose a series of documents and studies in the context of its operations, with some exceptions due to confidentiality. Businesses must deal with the potential disclosure of their information when submitting applications, and they face considerable constraints introduced by the Transparency Regulation, as confidentiality requests fall within the scope of the information items listed and are related to the proof of potential commercial harm. Although the legal framework includes provisions to protect secrets, the administrative burdens placed on Food Business Operators (FBOs) hardly encourage

⁽⁴¹⁾ S. Berger Richardson, *Outcome-based regulations in the meat processing sector: integrating worker safety and animal welfare into risk assessments* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

⁽⁴²⁾ Recital no. 16 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 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.

⁽⁴³⁾ M. Vanuzzo, *Transparency in EU food law* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

innovation in the EU. Therefore, the potential for food innovation could be hindered by the application of the Transparency Regulation, which requires FBOs to notify the studies supporting an application or notification to the European Food Safety Authority (EFSA). For example, the novel food regulation, as amended by the Transparency Regulation, demands additional regulatory requirements that potentially hinder the innovation process.⁴⁴

9.2.- Innovation and sustainability

Innovation in the food sector can lead to a more sustainable food system, through both the introduction of products and processes that were not previously used and the implementation of 'old' technologies with reexamined functions, as was highlighted by Dr. Valeria Paganizza (University of Padova)⁴⁵. This is the case with biological control agents (BCAs), which are meant as natural enemies, antagonists, competitors, or other organisms used to control pests, either directly or indirectly. BCAs, generally speaking, could be insects or microorganisms and might be used along the entire food chain as a total or partial replacement for pesticides, from primary production to food processing, storage, and distribution, as well as a tool against bacterial pathogens. Despite the purposive statements of the Farm to Fork Strategy, which assigns to each actor of the food chain a commitment towards sustainability with the best use of natural-based resources, the regulatory setting and risk approaches in this area are still too fragmented. If insects as BCAs are one of the key elements of integrated pest management, there are still some regulatory bottlenecks and gaps. At the same time, the potential of microorganisms in actively ensuring food safety is still undervalued at an EU level.

9.3.- Consumer regulation and behavioral science

New technologies, new substances, and innovative

manufacturing practices have not only always required a preemptive approach to ensure food safety, but they have also progressively been accompanied by a rising awareness among consumers of some of the critical issues affecting the food regulatory system in a broad sense, such as the lack of transparency. EU law struggles to define the role of consumers: whether they are mere subjects who need protection, or whether they are considered proactive and skilled players. This trend has led to an increasing importance of the role of behavioral science in food law, as presented by Dr. Carien de Jager (University of Groningen).⁴⁶ An example of this modification was illustrated by a study conducted by the University of Groningen. Researchers explored whether the *legal* assumption that consumers read the list of ingredients when purchasing food products, to determine whether a food package is misleading, corresponds to consumers' *actual* buying behaviour. In an experiment conducted by Dr. Carien de Jager and Prof. Arie Dijkstra, participants were asked to choose between a healthy and a tasty product from two or five packages of strawberry yoghurt. The study reveals that the legal assumption that the 'average consumer' considers the list of ingredients when purchasing food products conflicts with actual consumer behavior. More specifically, this legal assumption should be reconsidered due to the large number of available options in a supermarket, consumers' different information processing styles, and varying purchase intentions. The authors recommended replacing the assumption of 'the average consumer reading the list of ingredients' with an assessment of the package as a whole, where the list of ingredients is just one of the relevant factors in court decisions on misleading food packaging (CJEU Teekanne). The study underscores the importance of behavioral science research in enhancing healthy and sustainable food choices by consumers and, therefore, for the future of food law.

9.4.- Research agenda

A major challenge in food law is reconciling, on one

⁽⁴⁴⁾ A. Monaco and T. Reinhardt, *How innovation-friendly is the novel food regulation?* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

⁽⁴⁵⁾ V. Paganizza, *A further piece of the sustainable food system puzzle: biocontrol agents in the food chain* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

⁽⁴⁶⁾ C. de Jager, *The List of Ingredients on Food Packages: What's in it for consumers?* (The Future of Food Law Paganizza, Wageningen University and Research, May 25-26, 2023).

hand, the need for regulation to protect the safety, sustainability, or consumer interest, and on the other hand, the critique that over-regulation impedes progress and innovation. More practically, how should the current food safety risk regulatory architecture under the umbrella of the General Food Law Regulation be aligned with sustainability concerns? Will consumers and their food choices act as an instrument for more sustainable food? What is the role of innovation in this context? Is innovation truly a champion of sustainability, as the proposal for a New Genomic Technique Regulation suggests, or is it merely a deregulatory argument? What is clear is that the current almost exclusive focus on food safety regulation will make way for increasingly diverse regulatory goals, such as health, environmental friendliness, social and ethical sustainability. It then becomes a significant legal task to reconcile different interests, bridge the food industry's resistance to being regulated too stringently, and facilitate innovation.

10.- Food System Thinking

Recent international⁴⁷ and EU⁴⁸ food governance scholarship adopts food systems language as a point of departure, for instance, to emphasize the need for a more integrated approach. In these approaches, the notion of 'food systems' is most often used loosely, without committing to a more formal understanding of systems thinking as a methodology. This represents a potentially missed opportunity to benefit from the advances that systems thinking offers.

In her presentation on systems thinking for lawyers, Prof. Pierson-Brown (University of Pittsburgh School of Law)⁴⁹ highlighted that systems thinking approaches enrich traditional models of legal thinking. Systems

can be defined as interconnected elements that produce some outcome, and can be recognized as wholes which are greater than the sum of their parts. Using this definition, pieces of legislation – which contain a purpose-driven set of interconnected rules and procedures – can be described as systems. Systems thinking is a paradigm and a practice which uses the identification of 'systems' as a starting point for problem assessment and analysis. Because public policy challenges are, essentially, system challenges, systems thinking should be explicitly incorporated into the legal education curriculum.⁵⁰ Systems thinking adds value to legal education by providing a framework for identifying the structural characteristics of the problems that societies use law-making processes to solve. This enables students to think about law and public policy in terms of both, the contexts in which they operate, and the systemic structures they perpetuate. As lawyers, we are both system participants and system architects. Conscious application of a systems thinking approach can lead to the development of both policy innovation and novel approaches to legal practice.

Pierson-Brown argues that there are four core elements of systems thinking. These include an emphasis on outcomes emerging from the structure of a system and a recognition that systems are resilient, but not fixed. Systems thinking can be put into practice in multiple ways. Lawyers are encouraged to observe and parse through the components that make up the micro and macro-level systems their advocacy seeks to address. Distinguishing positive and normative systemic outcomes is essential. This work involves treating separately what a system actually creates or perpetuates, and the dominant narratives ascribed to these occurrences. Systems are structured to produce their demonstrated results. Narratives about systemic

(⁴⁷) R. Bhunnoo, *A food systems approach to policy for health and sustainability*, in *Global Food Security*, 2018, pp. 1-16 <<https://www.foodsecurity.ac.uk/publications/a-food-systems-approach-to-policy-for-health-and-sustainability.pdf>>; W. Willet et al., *Food in the Anthropocene: the EAT–Lancet Commission on healthy diets from sustainable food systems*, in *The Lancet*, 2019, 393, 10170, pp. 447-492.

(⁴⁸) European Commission, Directorate-General for Research and Innovation, Group of Chief Scientific Advisors, *Towards a sustainable food system: moving from food as a commodity to food as more of a common good: independent expert report*, Publications Office of the European Union, 2020 <<https://op.europa.eu/en/publication-detail/-/publication/ca8ffeda-99bb-11ea-aac4-01aa75ed71a1/language-en>>; A.-K. Bock, L. Bontoux, and J.-E. Rudkin, *Concepts for a sustainable EU food system: reflections from a participatory process*, Publications Office of the European Union, 2022 <https://publications.jrc.ec.europa.eu/repository/bitstream/JRC126575/JRC126575_01.pdf>.

(⁴⁹) T. Pierson-Brown, *Systems Thinking for Lawyers* (The Future of Food Law Conference, Wageningen University and Research, May 25-26, 2023).

(⁵⁰) T. Pierson-Brown, *(Systems) Thinking Like a Lawyer*, in *Clinical L Rev*, 2020, 26, 51, pp. 515-562.

phenomena can be used catalyze change or entrench the status quo. Whole process mapping to develop structural awareness can be a helpful tool in creating shared understandings of the scope of a particular systemic challenge. In all, complexity should be incorporated into problem analysis. The posture of problem stewardship should be adopted over that of problem solvers, as the systems producing inequitable access to the resources needed for human thriving will take long-term efforts to correct. Sustainable advocacy most realistically involves managing and mitigating resistance to change over significant periods of time. Finally, a systems thinking approach is exemplified in intervention strategies developed by advocates working in interdisciplinary teams.

10.1- Research agenda

The idea of linking food law and the future of food law to the notion of food systems creates an opportunity for a more robust, analytically interested, and methodologically informed use of systems thinking insights. How can we formulate a food systems law? How can systems thinking help us to raise awareness, understand, and model the components and their relationships within the elements of the food system? What structural awareness can we develop through a legal food systems perspective?

11.- The road ahead: a research agenda

As the world transitions toward a sustainability paradigm, grapples with the challenges of the post-Covid era, and navigates ongoing conflicts, food law stands on the brink of confronting a multitude of intricate challenges. Providing an answer to 'what is the future of food law' beyond the Farm to Fork Strategy is not an easy task to accomplish. Nevertheless, this conference has ignited the discussion, laying the foundation for legal scholars to play a pivotal role in shaping the development of up-to-date legislation that effectively integrates environmental, social, and economic sustainability, human rights, and public health in an ever-changing food landscape.

The conference has underscored the need for re-evaluating and reformulating the principles and approaches that underpin food law. Building upon these insights, this concluding section outlines a comprehensi-

ve research agenda that takes into account diverse dimensions of food law at the national, EU, and international levels.

The need for a sustainability overhaul of existing food law is evident. Our conversation began by focusing on the Framework for a Sustainable Food System (FSFS), a flagship initiative of the Farm to Fork Strategy, and the understanding of the term 'sustainability' in food law. However, uncertainties surrounding the FSFS publication from the Commission raised questions about the depth and breadth of the announced shift from food law to food systems law and how this shift will be practically implemented. Key priorities in this effort involve exploring the integration of sustainability—a concept in constant flux and challenging to grasp within food law—and focusing on the legal mechanisms that promote sustainable food production and consumption. Clear questions have emerged not only regarding the outlines of the future FSFS but also its institutional design, particularly concerning EFSA, to future-proof EU food law. Given the uncertainty surrounding the passage of the Commission proposal for a FSFS, a new, more urgent research line emerges: how to ensure the sustainability shift in EU food law if the legislative framework is abandoned? Addressing this question remains essential for the Commission to establish a clear direction and policy coherence at both the EU and national levels.

Food sustainability also raises fundamental questions in relation to several key principles and concepts within EU Internal Market law, competition law, and the Common Agricultural Policy (CAP). Further research is required to investigate how to uphold Internal Market uniformity and harmonisation when sustainability integration may necessitate localised action and greater flexibility for national governments. The international dimension of food law underscores that the current regulatory architecture of this domain has primarily centered on food trade, safety, quality, consumer protection, and food commodification. However, the global crisis and the urgency of incorporating sustainability in legislation raise concerns about creating a more democratic system of food governance. Further policy and legal interventions are therefore needed in this area. The shift to food system law should prioritize food safety as a public interest, and integrate novel principles of sustainability, agency, and governance, all within the overarching framework of a human rights approach.

Another area demanding scholarly attention is the

emerging of corporate due diligence obligations. As the EU moves towards adopting a Directive on Corporate Sustainability Due Diligence, analysing its potential impact on food systems sustainability is of utmost importance. Will the implementation of due diligence obligations result in increased pressure from civil society on corporate actors? How will this contribute to the sustainability transition?

Among the challenges laid out in the conference and in this synopsis, the future of food law must grapple with the integration of a comprehensive understanding of health. This entails recognising health as a transversal notion that encompasses various aspects of food and environmental law. Food law has thus far fallen short of adopting and governing a holistic approach to health, which includes human, animal, and ecosystem dimensions. Further research is needed to deepen our understanding of how the One Health Approach can be effectively integrated into food law. This integration should account for interdisciplinary collaboration, identify gaps and opportunities for a more unified approach to addressing sustainability and resilience issues in the food system, and ultimately address challenges in implementing and enforcing One Health-related policies effectively.

Rethinking the food system requires examining its underlying principles. For instance, the principle of transparency has received limited understanding in the food sector. Although transparency has an intrinsic value, the Court of Justice of the European Union doesn't seem to intend transparency as an overarching legal principle. This is evident in the General Food Law reform and in risk regulation in general, as well as in other areas of food law such as information to consumers. However, transforming the food system implies taking a closer look at the principle-based approach. Despite their legal value and their understanding being unclear in doctrine and case law, they can nevertheless provide valuable insights for policy-makers.

Innovation is another critical element in shaping the future of a more sustainable food system. As previously highlighted, innovation has revealed some deficiencies within the food regulatory system, notably the lack of transparency. The recent Proposal for a Regulation on plants obtained by New Genomic

Techniques (NGT)⁵¹ has marked a shift in the Commission's approach to regulating innovation in the EU food systems. In particular, the proposal facilitates the development and placing on the market of plants and plant products – previously subject to the stringent EU GMO legal framework - thereby contributing to EU innovation and sustainability objectives. The Commission's evolving approach to innovation regulation is already influencing the future of food law, prompting questions about when and to what extent clear boundaries will be established to ensure that proposed innovative solutions align with both sustainability objectives and safety considerations.

Overall, food systems, conceived as highly interconnected and dynamic networks of actors, processes, and regulations, are inherently complex. The overarching question that resonated throughout the conference was how to formulate a food systems law that supports a comprehensive and forward-looking approach and recognizes the complexity and interconnectedness of all the elements in the food system. To address the complex legal challenges that emerge within it, interdisciplinary research, international collaboration, and legal innovations are indispensable, along with educational paths. In line with this objective, the conference has paved the way for the establishment of the Food Law Academic Networks (FLAN), an initiative designed to unite academic experts in food law from around the world, fostering continued discourse and progress in shaping sustainable food systems.

ABSTRACT

The 2023 Annual Conference of the Law Group at Wageningen University & Research (WUR) explored the future trajectory of EU food law beyond the Farm to Fork Strategy, delving into topics often overlooked in policy discussions. Moving from the (lack of) a legislative proposal for the Framework for Sustainable Food System (SFSF), the conference aimed to reassess the legal architecture of the EU food system, fostering critical discourse on topics such as sustainability in the agri-food chain, food system governance,

⁽⁵¹⁾ European Commission, 'Proposal for a Regulation of the European Parliament and of the Council on plants obtained by certain new genomic techniques and their food and feed, and amending Regulation' (EU) 2017/62, COM(2023)411.

corporate due diligence, the OneHealth approach, animal law, risk regulation, and food system thinking. Insights from the conference reflected the need for reformation in some food law approaches, particularly in how incorporating sustainability and innovation. The establishment of the Food Law Academic Networks (FLAN) emerged as a pivotal initiative to further interdisciplinary research and international collaboration in shaping sustainable food systems. Acknowledging the global food system's complexity, the paper concludes by proposing key research questions for shaping the future agenda of food law.

La Conferenza Annuale del Law Group tenutasi nel 2023 presso la Wageningen University & Research (WUR) ha avuto come scopo primario l'approfondimento delle nuove direzioni del diritto alimentare dell'Unione Europea al di là della Strategia Farm to

Fork, concentrandosi su argomenti spesso trascurati nel contesto dei dibattiti politici. Partendo dalla mancanza di una proposta normativa per il Sustainable Food System Framework (SFSF), il presente contributo sintetizza le varie relazioni presentate, concentrando l'attenzione sui profili di criticità e sulle opportunità di revisione dell'architettura del diritto alimentare, con particolare riferimento a questioni quali la sostenibilità nella filiera agroalimentare, la governance del sistema alimentare, la due diligence, l'approccio OneHealth, il diritto degli animali, la risk regulation e il food system thinking. Le intuizioni emerse dalla conferenza riflettono la necessità di riformare alcuni approcci del diritto alimentare, specialmente per quanto riguarda l'integrazione degli elementi di sostenibilità e innovazione. Riconoscendo la complessità del sistema alimentare globale, il contributo si conclude proponendo domande di ricerca chiave volte a plasmare l'agenda futura del diritto alimentare.