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Mandatory food information in case of short food supply chains and local food systems in EU and US legislation: a comparative study¹

1. Introduction

“Short supply chain” is a legal term in EU law. It was defined in 2013 within the rural development policy to specify for which kind of initiatives the Union support can be dedicated.² Local food systems (LFS) is a wider phenomenon, not legally defined, encompassing short food supply

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² “Short supply chain means a supply chain involving a limited number of economic operators, committed to co-operation, local economic development, and close geographical and social relations between producers, processors and consumers,” article 2 § 1 (m) of Regulation (EU) 1305/2013 of the European Parliament and the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) 1698/2005 [2013], OJ L 347/487, 20.12.2013. See more on the subject: A. Kapała, *EU legal instruments supporting short food supply chains and local food systems*, “Revista General de Derecho Europeo” 2020, No. 52; https://www.iustel.com/v2/revistas/detalle_revista.asp?id_noticia=423040&d=1 [accessed on 28.05.2021].

chains (SFSC).³ Both imply a distribution of food in close proximity to where it is produced. In the field of EU food law, there is no specific set of provisions for SFSC or LFS. Food law, which in the EU is mostly issued in the form of regulations of a horizontal nature, therefore, constituting a comprehensive system of rules binding directly all EU Members in the entire food and feed sector,⁴ includes not only food safety⁵ and food hygiene regulations⁶ but also requirements regarding food information to the consumer.⁷

A general principle of food law and an important element in assuring a high level of consumer protection is to provide a basis for consumers to make informed choices in relation to the food they consume and to prevent any practices that may mislead the consumer.⁸ Therefore, EU Regulation 1169/2011 laid down rules on food labelling applicable to all foods, in particular, it drew up a list of mandatory information which should in principle be provided for all foods intended for the final consumer and mass caterers.

³ In the European Commission Report (2013) from the Commission to the European Parliament and the Council on the case for a local farming and direct sales labelling scheme' COM (2013) 866, the term local food system "means that production, processing, trading and consumption of food occur in a relatively small geographical area." In other words, local food systems are everything between production and consumption that occurs within a certain geographic proximity (between farmer and consumer). In US literature, there are various definitions of LFS, an example of which is as follows: "local and regional food systems generally refer to agricultural production and marketing that occurs within a certain geographic and social proximity (between farmer and consumer) or that involves certain social or supply chain characteristics in producing food (such as small family farms, urban gardens, or farms using sustainable agriculture practices)." See R. Johnson, *The Role of Local and Regional Food Systems in U.S. Farm Policy*, Congressional Research Service Report, 2016, p. 1.

⁴ C. Losavio, *Le regole comunitarie e nazionali relative all'igiene dei prodotti*, in: L. Costato, A. Germanò, E. Rook Basile (eds.), *Trattato di diritto agrario*, vol. 3, Torino 2011, p. 186.

⁵ 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, OJ L 31, 1.02.2002.

⁶ Hygiene package includes: Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs, OJ L 139, 30.04.2004; Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin OJ L 139, 30.04.2004; Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, OJ L 95, 7.04.2017.

⁷ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, OJ L 304, 22.11.2011. See a comprehensive commentary on the Regulation in: A. Szymecka-Wesołowska, K. Jędrych, P. Szczypkowska (eds.), *Znakowanie, prezentacja, reklama żywności. Komentarz do rozporządzenia Parlamentu Europejskiego i Rady (UE) nr 1169/2011*, Warszawa 2018.

⁸ Article 14 § 3 (b) and article 16 of the Regulation (EC) 178/2002 and article 1 of the Regulation (EU) 1169/2011.

The autonomy left to national legislators, although having competing competencies to define rules in the field of health protection and food hygiene, has been very limited in this area.

In US law, LFS and SFSC are not legal concepts, nonetheless, in recent decades, there has been a rapidly progressing “relocalization” of the food system.⁹ This is visible both, in the social and theoretical movements,¹⁰ as well as in the actual growth in demand for locally produced foods¹¹ and in the increasingly widespread marketing channels of these products, such as farmers’ markets or community-supported agriculture.¹² EU consumers are also increasingly interested in buying locally produced food and producers – in selling it under the various forms of SFSC.¹³ Local food systems and SFSC have a positive impact in various dimensions: economic, social, environmental, nutrition/health.¹⁴ The importance of building a sustainable and resilient food system “that functions in all circumstances, and is capable of ensuring access to a sufficient supply of affordable food for citizens” has been recently recognized by the European Commission in its Farm to Fork Strategy, especially in the context of COVID-19 pandemic. The current outbreak has intensified the calls for shorter supply chains. People “want to feel closer to their food” and they “want food that is fresh, less processed and sustainably sourced.”¹⁵

⁹ S. Martinez et al., *Local Food Systems: Concepts, Impacts, and Issues*, Economic Research Service Report, no. 97, 2010, p. 2.

¹⁰ Growing interest in local foods in the United States is the result of several movements see A. Guptill, J.L. Wilkins, *Buying into the Food System: Trends in Food Retailing in the U.S. and Implications for Local Foods*, “Agriculture and Human Values” 2002, Vol. 19, issue 1, p. 39 These movements include: the environmental movement, the community food-security movement, the Slow Food movement, the local food movement. More: S. Martinez et al., *Local Food Systems...*, p. 2.

¹¹ About surveys reflecting US consumers interest in purchasing local foods see: J. Keeling-Bond, D. Thilmany, C. Bond, *What Influences Consumer Choice of Fresh Produce Purchase Location?* “Journal of Agricultural and Applied Economics” 2009, Vol. 41, issue 1, p. 61; L. Zepeda, L. Jinghan, *Who Buys Local Food?* “Journal of Food Distribution Research” 2006, Vol. 37, issue 1.

¹² More on the subject and the US literature on SFSC and LFS: A. Kapala, *Legal instruments to support local food systems in US law*, “Comparative Law Review” 2020, Vol. 26, pp. 10–55.

¹³ European Commission Staff (2013) Working Document on various aspects of short food supply chains Accompanying the document Report from the Commission to the European Parliament and the Council on the case for a local farming and direct sales labelling scheme COM (2013) 866 final.

¹⁴ More on the importance of SFSC see in: Y. Chiffolleau, T. Dourian, *Sustainable Food Supply Chains: Is Shortening the Answer? A Literature Review for a Research and Innovation Agenda*, „Sustainability” 2020, Vol. 12, pp. 1–21; A. Kapala, *Legal instruments...*; eadem, *EU legal instruments supporting...* and the literature cited there.

¹⁵ 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.

Most often producers involved in SFSC are small farmers selling their products in limited quantities, either primary or processed, resulting from their agricultural activities, or where production and processing are done by simple, non-industrial methods, in premises mainly used as private homes, using household appliances in a domestic kitchen. The scope of farmer's participation in the SFSC is dictated by EU regulations in the field of food safety and hygiene referring to "direct supplies," "marginal, localized and restricted activity," and "retail" as well as by national regulations, especially in the field of civil or tax law. For example, in Italy, direct sales are regulated by article 4 of Legislative Decree No. 228/2001,¹⁶ in France by the provisions of the rural and maritime fishing code,¹⁷ defining the agricultural activity, and the relevant jurisprudence,¹⁸ in Poland, by the regulation on "agricultural retail trade."¹⁹ The analysis of these provisions is beyond the scope of this study.²⁰ It should, however, be mentioned here that all three countries' laws allow farmers to sell their primary products obtained from their agricultural activities, as well as processed foods, consisting wholly or partly of their own primary products, directly to the final consumer or to a local retail establishment directly supplying the final consumer. The participation of intermediaries is in principle not allowed, and the sale to the local retail establishments is geographically limited. In the US law, "direct marketing" also means the sale of food directly from the farmer to the consumer and its scope is determined by various sources of laws, concerning different fields, issued on federal and state levels, as well as by the federal programmes offering grants for this activity.²¹

In the marketing of food within SFSC it should be considered, on the one hand, the specific category of food, made and sold directly by their producers, and rather limited organizational and financial resources of the

¹⁶ Decreto Legislativo 18 maggio 2001, n. 228, "Orientamento e modernizzazione del settore agricolo, a norma dell'articolo 7 della legge 5 marzo 2001, n. 57" (Gazzetta Ufficiale n. 137, 15.06.2001 – Supplemento Ordinario n. 149).

¹⁷ Article L.311-1 of Code rural et de la pêche maritime, version consolidée au 14 avril 2020, article L. 311-1 as amended by LOI n° 2019-469 du 20 mai 2019 – article 4(V) (Journal Officiel de la République Française No 0117, 21.05.2019).

¹⁸ See the relevant jurisprudence and the French literature cited in the study: A. Kapała, *Legal status of direct sales of agricultural and food products in the legislation of selected EU Member State*, „Przegląd Prawa Rolnego” 2020, No. 1, pp. 65–77.

¹⁹ See more on the subject: A. Kapała, *Agricultural Retail Trade Regulation as a Legal Instrument to Support Local Food Systems*, „European Food and Feed Law Review” 2020, Vol. 15, issue 3, pp. 231–236.

²⁰ This subject was discussed: A. Kapała, *Legal status of direct sales...*

²¹ More on the farmer-to-consumer direct marketing in US law see: A. Kapała, *Legal status of direct marketing in US law*, „Diritto Agroalimentare” 2020, f. 3, pp. 547–561.

producers, in comparison to professional food businesses, and on the other hand, the need to ensure food safety at every stage of production and sale, regardless of the form of sale and the type of products sold, in order to protect the life and health of consumers, as it is foreseen by the EU law. It should also be taken into account that the SFSC is characterized by a close socio-geographic relationship between consumers and producers and direct contact between them at the time of purchase, which allows the consumer to obtain information about the product directly from the producer. Therefore, there is a need to balance the interests of consumers and farmers in such a way that the consumers are provided with an adequate level of protection in the field of food information, and the farmers are not restricted with excessive formalism and barriers that prevent them from participating in the SFSC, especially from selling a wide range of foodstuffs, including processed foods.

The study aims to identify what food information is required from farmers selling their products under the SFSC in EU law according to Regulation (EU) 1169/2011 and how selected Member States (Poland, Italy and France) apply the Regulation, which leaves some issues to their legislative competence in this regard. A comparison of individual regulations of the Member States laid down on the basis of the legal framework imposed by Regulation (EU) 1169/2011, with the provisions of US law, will serve as a reference point to formulate conclusions, in particular, whether the analysed measures are appropriate and proportionate for the SFSC. The study does not address specific labelling requirements of certain foodstuffs set out in other EU and national legislation, including Regulation (EU) No 543/2011 regarding fresh fruit and vegetables,²² Regulation (EU) 1308/2013 laying down requirements for eggs,²³ Council Directive 2001/113/EC relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption,²⁴ or Council Directive 2001/110/EC relating to honey,²⁵ which due to their complexity require separate considerations.

²² Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors, OJ L 157, 15.06.2011.

²³ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJ L 347, 20.12.2013.

²⁴ OJ L 10, 12.01.2002.

²⁵ *Ibidem*.

2. EU Law

In EU law, there is no specific legal regime applicable to products made and sold within SFSC, therefore the farmer engaged in this marketing channel is, in principle, not exempt from the responsibility of providing consumers with food information but is subject to the labelling obligations prescribed by European food law in the same way as products from conventional supply chains. Since the entry into force of Regulation (EU) 1169/2011 concerning the information of consumers on foodstuffs in December 2014, the informative formalism has been reinforced and applies, with some derogations, even when the consumer can interact directly with the farmer whom himself produces and sells the products.

The information obligations are conditioned by the fact that food is presented prepacked to consumers and they are reduced only when the products are sold not prepacked. According to article 2 § 2, letter e) of Regulation (EU) 1169/2011, “prepacked food” means “any single item for presentation as such to the final consumer and to mass caterers, consisting of a food and the packaging into which it was put before being offered for sale, whether such packaging encloses the food completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging.”

It is worth noting that the packaging criterion²⁶ suffers from some limitations, which are very relevant for SFSC: „prepacked food” does not cover foods packed on the sales premises at the consumer’s request or prepacked for direct sale.²⁷ Thus, if the food marketed in SFSC fulfils the definition of prepacked food provided for in article 2, various informative statements must be communicated to the consumer, as foreseen by article 9 of the Regulation. If the food marketed is non-prepacked (i.e. foods offered for sale to the final consumer or to mass caterers without prepackaging, or foods packed on the sales premises at the consumer’s request or prepacked for direct sale) article 44 of the Regulation applies.

According to article 9, the mandatory particulars include the name of the food, the list of ingredients, any ingredient or processing causing allergies or intolerances, the quantity of certain ingredients, the net quantity of the

²⁶ M. Frian-Perrot, *La gouvernance sanitaire et alimentaire des filières courtes*, in: B. Grimonprez, D. Rochard (eds.), *Agriculture et ville: vers de nouvelles relations juridiques*, Poitiers 2016, p. 179.

²⁷ For more insights on the scope of application of the definition of prepacked food see S. Bolognini, *La disciplina della comunicazione business to consumer nel mercato agro-alimentare europeo*, Torino 2012, p. 140 ff.

food, the date of minimum durability or the “use by” date, any special storage conditions and/or conditions of use, the name or business name and address of the food business operator, the country of origin or place of provenance, instructions for use where it would be difficult to make appropriate use of the food in the absence of such instructions, a nutrition declaration, and with respect to beverages containing more than 1,2% by volume of alcohol, the actual alcoholic strength by volume. The regulation requires that the mandatory particulars should be printed on the package or on the label in such a way as to ensure clear legibility, and also imposes the size of the characters.²⁸

For the farmers particularly difficult may be the mandatory nutrition declaration, especially when it comes to calculate and express the energy value and the amounts of fat, saturates, carbohydrate, sugars, protein and salt.²⁹ However, the regulation provides for exemption from the requirement of the mandatory nutrition declaration for foods listed in the Annex V. The most important exemption in the context of SFSC relates to the „food, including handcrafted food, directly supplied by the manufacturer of small quantities of products to the final consumer or to local retail establishments directly supplying the final consumer.” The derogation concern „food” and not only unprocessed products, which therefore applies also in the case where a farmer sells processed products, both plant and animal origin as well as composite. “Small quantities” and “local” are defined by national legislators. In Annex V it is not specified if the exemption relates to packaged food or unpackaged food directly supplied to the final consumer. Taking into account that article 44 of Regulation (EU) 1169/2011, for “foods offered for sale to the final consumer or to mass caterers without prepackaging, or where foods are packed on the sales premises at the consumer’s request or prepacked for direct sale,” requires only mandatory information on allergens, it can be assumed that the additional, explicit exemption from the nutrition declaration in Annex V applies both to packaged and non-prepacked „food, directly supplied by the manufacturer of small quantities of products to the final consumer or to local retail establishments directly supplying the final consumer.” Other exempted categories of foods listed in Annex V include unprocessed products that comprise a single ingredient or category of ingredients; processed products which the only processing they have been subjected to is maturing and that comprise a single ingredient or category of ingredients, food in packaging or containers the largest surface of which has an area of less than 25 cm².

²⁸ In characters using a font size where the x-height, as defined in Annex IV, is equal to or greater than 1,2 mm.

²⁹ Article 30 of Regulation (EU) 1169/2011.

The list of ingredients is not mandatory for some foods. Therefore, farmers who do not wish to provide it may limit sales to the products listed in the exemption rule, i.e. fresh fruit and vegetables, including potatoes, which have not been peeled, cut or similarly treated; fermentation vinegars derived exclusively from a single basic product, provided that no other ingredient has been added; cheese, butter, fermented milk and cream, to which no ingredient has been added other than lactic products, food enzymes and micro-organism cultures essential to manufacture, or in the case of cheese other than fresh cheese and processed cheese the salt needed for its manufacture; foods consisting of a single ingredient, where the name of the food is identical to the ingredient name; or the name of the food enables the nature of the ingredient to be clearly identified.

Important provision for the SFSC is article 44 of Regulation (EU) 1169/2011, which requires foods offered for sale to the final consumer or to mass caterers without pre-packaging, or foods packed on the sales premises at the consumer's request or prepacked for direct sale, to display only one mandatory particular, which is the information on any ingredient causing allergies or intolerances used in the manufacture or preparation of food and still present in the finished product, even if in an altered form. Other information is not mandatory unless the Member States adopt national measures requiring the provision of some or all of the particulars or elements of the particulars listed in article 9 and 10 of the Regulation.

The EU considers information on potential allergens very important with a view to consumer health protection, which cannot be omitted even in the case of non-prepacked foods, as according to evidence most food allergy incidents can be traced back to non-prepacked food. Therefore the information on potential allergens should always be provided to the consumer.³⁰ As regards the means through which allergen information should be made available, the Commission explained that the Member States remain competent to adopt national provision on the means, and „in principle all means of communication as regards the provision of allergen information, are allowed to enable the consumer to make an informed choice, e.g. a label, other accompanying material, or any other means including modern technology tools or verbal communication (i.e. verifiable oral information).”³¹ Therefore, even verbal communication is sufficient. However, if the national measure is not adopted, the information

³⁰ Recital 48 of Regulation (EU) 1169/2011.

³¹ Commission Notice of 13 July 2017 relating to the provision of information on substances or products causing allergies or intolerances as listed in Annex II to Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, C/2017/4864, IO C 428, 13.12.2017.

on allergens must be made available according to the same rules that apply to prepacked food. In accordance with article 13 of the Regulation, it must be easily visible, clearly legible and, where appropriate, indelible and be provided in a written form. Therefore, in this case, it is not allowed to provide allergen information only orally upon a request by the consumer.

The EU regulation on food information takes some account of the SFSC where it exempts “food, including handcrafted food, directly supplied by the manufacturer of small quantities of products to the final consumer or to local retail establishments directly supplying the final consumer” from the requirement to provide a nutrition declaration, and where, for non-prepacked food sold to the final consumer or mass caterers, and foods that are packed on the sales premises at the consumer’s request or prepacked for direct sale the only mandatory information, which it requires relates to allergens. However, in this respect, Member States may adopt national measures requiring other particulars to be provided.

3. Polish law

According to the general rule set out in the Polish Food Safety and Nutrition Act, foodstuffs placed on the market in the territory of Poland must be labelled in Polish, and may also be labelled in other languages.³² Polish law prohibits the sale of products not only after the expiry date for consumption but also after the expiry of the minimum durability,³³ which seems to be more restrictive than the EU Regulation.³⁴ Moreover, the national legislator requires a lot of compulsory information in the case of the sale of non-prepacked food referred to in article 44 of Regulation (EU) 1169/2011.³⁵ The mandatory information should be provided at the point of sale on the label relating to the food or otherwise in a place directly accessible to the final consumer in a written form.³⁶ They include the name of the foodstuff; the

³² Article 48 of the Polish Food Safety and Nutrition Act (ustawa z 25 sierpnia 2006 r. o bezpieczeństwie żywności i żywienia) (consolidated text Journal of Laws 2020, item 2021).

³³ Article 52 of the Polish Food Safety and Nutrition Act.

³⁴ Article 24 of Regulation (EU) 1169/2011.

³⁵ § 19 of the Polish Regulation of the Minister of Agriculture and Rural Development on labelling individual types of foodstuffs (rozporządzenie Ministra Rolnictwa i Rozwoju Wsi z 23 grudnia 2014 r. w sprawie znakowania poszczególnych rodzajów środków spożywczych) (Journal of Laws 2015, item 29).

³⁶ Verbal communication at consumer’s request is not sufficient: Judgment of the Provincial Administrative Court in Warsaw of 7.07.2013 (wyrok WSA w Warszawie z 7 lipca 2013 r.), VI SA/Wa 1914/12.

name or first name and surname of the manufacturer; a list of ingredients in accordance with articles 18–20 of Regulation (EU) 1169/2011, taking into account the information on allergens; commercial-grade; and additionally, in the case of glazed frozen fishery products – information on the quantitative content of glaze or fish or seafood in these products; for bread: unit weight, the indication “bread made from frozen dough” or “bread made from deep-frozen dough,” in the case of potatoes and certain types of meat – the country of origin or the place of provenance.³⁷

As can be seen, the Polish legislator requires more comprehensive information than the minimum prescribed by article 44 of the EU regulation 1169/2011, and thus taking into account primarily the interests of consumers, to provide them with the opportunity to make more informed choices.

4. Italian law

The Italian legislator, in article 19 of Legislative Decree No. 231/2017,³⁸ also requires more particulars to be given for food offered for sale to the final consumer or to a collective establishment without pre-packaging, or food packaged at points of sale at the consumer’s request, and products packaged for direct sale. These products must bear a special marking on the containers or another equivalent system, whether or not digital, easily accessible and recognizable. The information must appear on the signboard, which, in the case of direct supply to the collective establishments, can be reported on a commercial document, even electronically. The mandatory particulars include the name of the food; the list of ingredients, except in the cases of the exemption provided for in Regulation (EU) 1169/2011; the indications of substances or products causing allergies or intolerances; the conservation procedures for food products quickly perishable, where necessary; the expiry date for fresh pasta; the actual alcoholic strength by volume for beverages with an alcohol content higher than 1.2 per cent by volume; the percentage of glazing, considered tare, for the products frozen glazed; and the description “defrosted” in the case of foods that have been frozen before the sale and which are sold defrosted. For ice cream, pastry and bakery, fresh pasta and gastronomy, including food preparations, the list of ingredients can be

³⁷ § 19 of the Polish Regulation of the Minister of Agriculture and Rural Development on labelling individual types of foodstuffs.

³⁸ Decreto Legislativo 15 dicembre 2017, n. 231. Disciplina sanzionatoria per la violazione delle disposizioni del regolamento (UE) n. 1169/2011 (Gazzetta Ufficiale, Serie Generale n. 32, 8.02.2018).

reported on a single and specific signboard kept in full view or, for single products, on a specific register or another equivalent system, even digital, to be kept in view, available for the purchaser, near the display counters of the products.

The Italian requirements for non-packed food intended for the final consumer or retail establishment are quite extensive and go well beyond article 44 of Regulation (EU) 1169/2011 for the indication of allergenic substances. All information must be in writing and easily accessible to both the competent authority and the final consumer. Therefore, also the Italian farmer has to face the difficult task of meeting all the requirements but at least, in this case, he is not obliged to provide the nutritional value.

5. French law

In France obligations related to food information to consumers apply to all forms of short supply chains, direct sales, but also all indirect sales, including mass catering.³⁹ In addition, the use of certain selling techniques, such as distance selling (mail order, e-commerce, *drive fermiers*, etc.) or off-premises selling (at home, at the workplace, etc.) leads to the application of specific consumer law provisions, in addition to the requirements of food law.⁴⁰ In the case of the sale of prepacked food, mandatory food information as set forth in article 9 of Regulation (EU) 1169/2011 shall appear directly on the package or on a label attached thereto.

When products sold in the SFSC are not prepacked or when they are packaged “on the sales premises at the consumer’s request or prepacked for direct sale,” according to article 44 of Regulation (EU) 1169/2011 the obligations related to informing consumers are limited to listing the main allergens as mandatory. France introduced this obligation by a Decree of April 15, 2015, requiring the indication of major allergens on or near the food itself.⁴¹ The allergens marking should be in the form of signs indicating the presence of gluten, dairy eggs or other major allergens in the vicinity of non-prepacked foodstuffs offered to consumers by farmers (on the farm, in producers’ stores, marketplaces). Information on allergens should also be provided in the case of delivery of products to mass caterers, in the docu-

³⁹ M. Frian-Perrot, *La gouvernance sanitaire et alimentaire...*, p. 180

⁴⁰ *Ibidem*.

⁴¹ Article R 112-11 to R 112-15 of Code de la consommation modifiés par le Décret n° 2015-447 du 17 avril 2015 relatif à l’information des consommateurs sur les allergènes et les denrées alimentaires non préemballées, JORF n. 0092 du 19 avril 2015.

ment attached to the delivery containing the information referred to in article R 112-11 of the Consumer Code.

France has also adopted national measures to provide consumers with other mandatory particulars, in addition to information on allergens. Under article R 112-7 of the Consumer Code as amended by the Decree of 11 December 2014, only the name of food should be provided in the manner referred to in Regulation (EU) 1169/2011.⁴² Moreover, some specific information must be given for certain types of products. In the case of cheeses, the name must be supplemented by statements as to the fat content and the heat treatment applied, which must be written on a hard label affixed to each product or batch of similar product or on the rind of products sold entirely with indelible and visible marks.⁴³

It has been noted in the French literature that, given the multitude of obligations to inform the consumer about the properties of the prepacked food, it is certain that farmers are not sufficiently armed to cope with all applicable legal restrictions, such as allergen indication. In particular, local mass catering supplies may be difficult due to a large amount of information to be provided to caterers. In this context, some restrictions could be reduced, such as the requirement to provide a nutrition declaration, established mainly to combat obesity, which is exacerbated by the use of industrial processing in the global food systems.⁴⁴ In this context, locally produced artisanal products are seen as a key element in the transition to healthier food systems. Facilitations in favour of products from local agriculture which are proven to be natural and nutritious seem needed and reasonable.⁴⁵

6. US law

In US law, food labelling requirements, as in EU law, aim to facilitate consumers' informed choices, prevent consumer deception, educate consumers, assure food safety and wholesomeness and promote honest and fair dealing in the marketplace.⁴⁶ Labelling of food products sold directly to

⁴² Article R 112-7. Any foodstuff presented not prepacked at the point of sale to the final consumer shall be provided on itself or in the immediate vicinity, without risk of confusion, with a poster, a sign or any other appropriate means bearing its name within the meaning of article 17 of regulation (EU) n. 1169/2011 and, where applicable, the other mandatory information that accompanies it. M. Frian-Perrot, *La gouvernance sanitaire et alimentaire...*, p. 180.

⁴³ *Ibidem*.

⁴⁴ *Ibidem*, p. 181.

⁴⁵ *Ibidem*.

⁴⁶ M.T. Roberts, *Food Law in the United States*, New York 2016, p. 209.

consumers in various forms of SFSC, such as at a farmers' market, roadside stand, farm store, u-pick operation or public market, online or through community-supported agriculture, must comply with federal legislation, which applies regardless of where the product is sold. National labelling regulation is remarkably detailed and expressly preempts states from enacting different requirements for labels.⁴⁷

The Federal Food, Drug, and Cosmetic Act (FD&C Act) and the Fair Packaging and Labeling Act are the federal laws governing food products under the Food and Drug Administration's (FDA) jurisdiction. Under other federal laws, the US Department of Agriculture (USDA) regulates labels for certain meat, poultry, and egg products.⁴⁸ Pursuant to the FD&C Act and The Nutrition Labeling and Education Act (NLEA), which amended the FD&C Act, food labelling addresses nutritional information and is required for most prepared foods, such as breads, cereals, canned and frozen foods, snacks, desserts, drinks, etc., whereas nutrition labelling for raw produce (fruits and vegetables) and fish is voluntary. Food labels that bear nutrient content claims and certain health messages must comply with specific requirements. All new regulations are published in the Federal Register (FR) prior to their effective date and compiled annually in Title 21 of the Code of Federal Regulations (CFR).

The FDCA provides that "label" means information on the package, and "labelling" means information that accompanies the package, which includes the label.⁴⁹ Packaged, processed food labels usually have two distinct areas: the Principal Display Panel and the Information Panel. Most label information is required to appear on either the principal display panel (PDP) or the information panel.⁵⁰ Food labels must contain the name of the food, net quantity of contents, the name of the producer, the list of ingredients in descending order of predominance by weight, as well as nutritional information.⁵¹ Foods that are not packaged are subject to different requirements than packaged foods.⁵²

⁴⁷ Ibidem.

⁴⁸ Federal Meat Inspection Act, 21 USC §§ 601–695; Poultry Products Inspection Act, 21 USC §§ 451–471; Egg Products Inspection Act, 21 USC §§ 1031–1056. Labelling rules, including nutrient labels, for meat products are at 9 Code of Federal Regulations [CFR] part 317. USDA and FDA requirements are often the same. See N.D. Fortin, *Food Regulation: Law, Science, Policy, and Practice*, New Jersey 2017, p. 32.

⁴⁹ 21 U.S.C. § 321(m); M.T. Roberts, *Food Law...*, p. 209.

⁵⁰ 21 C.F.R. § 101.1.

⁵¹ 21 USC § 343(e), (f), (i), (q). Detailed statutory requirements, in subsection (q), apply to nutritional information.

⁵² M. Rosso Grossman, *Food Labels and Labeling in the United States*, "European Food and Feed Law Review" 2015, issue 2, p. 160.

Bulk foods are exempted from compliance with the FDA ingredient listing. In particular, food “received in bulk containers at a retail establishment” is exempt from the label requirement if the food is displayed to the purchaser with prominent and conspicuous ingredient information, in lettering at least one-fourth inch high. That information must appear either on “the bulk container plainly in view” or on a “counter card, sign, or another appropriate device.”⁵³ Also, a food repackaged in a retail establishment is exempt from some provisions of the act, such as, requiring a statement on the label of the name and place of business of the manufacturer, packer, or distributor, or requiring the label of a food, if the food is displayed to the purchaser with a counter card, sign, or another appropriate device.⁵⁴

According to FDA nutrition labelling regulations, nutrition information must be provided “for all products intended for human consumption and offered for sale,” unless an exemption applies.⁵⁵ An exception is foreseen for unpackaged food. For food “not in package form, the required nutrition labelling information shall be displayed clearly at the point of purchase (e.g., on a counter card, sign, tag affixed to the product, or some other appropriate device). Alternatively, the required information may be placed in a booklet, loose-leaf binder, or another appropriate format that is available at the point of purchase.”⁵⁶ If food products are sold from bulk containers, nutritional information may be displayed “on the labelling of the bulk container plainly in view” or displayed clearly at the point of purchase, following the rule for unpackaged food.⁵⁷

Packaged food labelled after 1 January 2006 must also comply with allergen labelling requirements.⁵⁸ The Food Allergen Labeling and Consumer Protection Act of 2004 requires labels for the eight major allergens, which cause 90% of food allergies. The Food Allergen Act applies to all “packaged foods” sold in the United States (that is, both domestic and imported foods) that are governed by the FDCA. It applies to “single-ingredient” foods as well as foods with multiple ingredients.⁵⁹ The Food Allergen Act, however, does not apply to raw agricultural commodities,⁶⁰ defined as “any food in its raw or natural state, including all fruits that are washed, coloured, or otherwise

⁵³ 21 CFR § 101.100(a)(2). M. Rosso Grossman, *Food Labels and Labeling...*, p. 160.

⁵⁴ 21 CFR § 101.100(b).

⁵⁵ 21 CFR § 101.9(a).

⁵⁶ 21 CFR § 101.9(a)(2).

⁵⁷ 21 CFR § 101.9(j)(16); M. Rosso Grossman, *Food Labels and Labeling...*, p. 161.

⁵⁸ *Ibidem*.

⁵⁹ *Ibidem*.

⁶⁰ 21 USC § 343(w)(1).

treated in their unpeeled natural form prior to marketing.”⁶¹ In addition, some food ingredients that do not pose health risks may be exempted from allergen labelling requirements.⁶²

Taking into account that the requirements of the Food Allergen Act apply only to packaged foods regulated by the FDA, consumers who buy bulk foods and unpackaged foods may not be informed adequately about the presence of allergens. Therefore, as observed in the literature, the Act itself fails to include provisions that would protect allergic consumers more effectively.⁶³ However, food laws implemented by the USDA, as for example, the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act require that allergens must be listed on the labels for meat, poultry, and egg products. When a meat or poultry product contains an allergen that is not listed on its label, the product may be recalled.⁶⁴

An interesting example of food made and sold within SFSC is “cottage food.” Most states have “cottage food” laws that allow non-potentially hazardous food like jams, jellies, baked goods, to be legally prepared in home kitchens and sold on a small scale directly to the consumer,⁶⁵ mostly on the farm or at the farmers’ market. This kind of products, in principle, cannot be sold to local restaurants or grocery stores.

Cottage food products are required to be labelled in accordance with specific state and federal labelling regulations. On the principal display panel must be provided product name and the net quantity of contents, the name of the cottage food operation (CFO) which produced the cottage food product and the words “Made in a Home Kitchen,” the ingredients of the cottage food product, a declaration if the food contains any of the major food allergens. Nutrition Facts panels will generally not be required for CFOs. However, if the food label makes any nutrient content or health claims then a Nutrition Facts Panel is required to be incorporated into the label. Nutrient content claims are not mandatory, but if provided, must comply with conditions set by the Federal Food and Drug Administration.⁶⁶ The same is true for health claims. If used, they must meet the prescribed requirements.⁶⁷ Whenever

⁶¹ 21 USC § 321(r).

⁶² 21 USC § 343(w)(6), (7); M. Rosso Grossman, *Food Labels and Labeling...*, p. 162.

⁶³ M. Rosso Grossman, *Food Labels and Labeling...*, p. 163.

⁶⁴ *Ibidem*, p. 162.

⁶⁵ “Cottage food products” means non-potentially hazardous baked goods; baked candies and candies made on a stovetop; jams, jellies, preserves, and fruit butters as defined in 21 CFR section 150. View the National Agricultural Law Center’s compilation of state cottage food laws: <https://nationalaglawcenter.org/state-compilations/> [accessed on 28.05.2021].

⁶⁶ 21 CFR Sections 101.13 and 101.54 et seq.

⁶⁷ 21 CFR 101.14 and 101.70 et seq.

a cottage food product is served without packaging or labelling in a permitted retail food facility or is used as an ingredient in the preparation of food in a retail food facility, the retail customer must be notified that the food product or the ingredient in the food was processed in a CFO home kitchen.

Under US law, all labelling requirements apply to all packaged food, therefore, similarly to EU law, the criterion for the application of these provisions is the sale of prepacked food. An exception is provided for packaged “cottage food” which do not have to display the nutrition declaration. This seems reasonable considering that such food is prepared in home kitchens and not in professional food establishments. Apart from this exception, the nutrition declaration is not mandatory only for raw products, nor is information on allergens. Bulk and unpackaged foods are not subject to allergen requirements, but although they are not labelled, ingredient lists and even nutritional information must be displayed at the point of purchase, which appears to be an undue restriction, especially for farmers selling food produced in their farms. On the other hand, information on allergens, which may pose a much greater risk to consumer health than the nutritional values, is not required.

7. Conclusions

EU law as well as US law determine in a very detailed and comprehensive way what information must, may and may not appear on the package label in order to provide consumers with information, sufficient to make informed decisions about what foods to buy. This aim inevitably leads to an increase in the amount of information provided to consumers. Under both legislations, most of the information must be on the packaged food.

In EU law, most packaged food must be labelled with mandatory information listed in article 9 of Regulation 1169/2011. Raw products and some processed produces are exempt from the ingredient listing. Although there is no specific legal regime applicable to products produced and sold under the SFSC, Regulation (EU) 1169/2011 provides for some derogations for this alternative sales channel, such exemption from the nutrition declaration in the case of “food, including handcrafted food, directly supplied by the manufacturer of small quantities of products to the final consumer or to local retail establishments directly supplying the final consumer” and limitation to only one mandatory information on allergens for non-prepacked food sold to the final consumer or mass caterers and foods that are packed on the sales premises at the consumer’s request or prepacked food for direct sale.

However, as regards the sale of non-prepacked food and prepacked food for direct sale, each of the analysed Member States has adopted national measures requiring more information on the food than the minimum specified in article 44 of Regulation (EU) 1169/2011. In French law, the mandatory information only covers allergens and some other specific information on certain products, such as cheese. More stringent requirements for non-prepacked food or food prepacked for direct sales are provided for in Italian and Polish law, which proves that the interests of consumers are treated as a priority. Both legislators require information in written form including the name of food, the list of ingredients, and others such as “bread made from frozen dough” (in Polish law), or “defrosted,” according to Italian law.

On the one hand, information made available in a written form is more verifiable and therefore has an advantage over oral information in the context of consumer protection. On the other hand, given that the SFSC is characterized by close geographic and social links between producers and consumers and their direct communication, the consumer can obtain the relevant information directly from the producer, especially in the case of permanent forms of cooperation between consumers and producers, such as in community-supported agriculture, where consumers are well acquainted in the production process and the producer himself. In such cases, the information could be made available to final consumers by verbal communication and not necessarily in a written form, especially that the definition of “food information” set forth in article 2 § 2(a) of Regulation 1169/2011 covers verbal communication. The label accompanying a specific product is justified and necessary to give the consumer the opportunity to get acquainted with the product in a situation where the consumer does not have direct contact with the producer and there are thousands of food products on the market.⁶⁸ This multitude of obligations and their specificity raises the question of their implementation in practice by farmers, who are often not prepared in terms of organization and time. It is likely that in many cases these requirements may remain unmet or discourage farmers from selling processed and prepacked food.

No less demanding in this matter, but even more restrictive than the EU legislator is the US legislator, which requires ingredient lists and nutritional information for all types of food, packaged and unpackaged, except raw products. Cottage foods are generally exempt from nutrition declaration. Bulk and unpackaged foods are not subject to allergen requirements, but

⁶⁸ More on the food information concept and labelling functions: P. Wojciechowski, *Regulacje dotyczące informacji na temat żywności*, in: M. Korzycka, P. Wojciechowski, *System prawa żywnościowego*, Warszawa 2017, pp. 413–419.

ingredient lists and nutritional information must be displayed at the point of purchase. The nutrition declaration appears to be an excessive and unjustified restriction, especially for farmers selling food produced on their farms, where food processing is generally limited to agricultural products resulting from the farm itself, without the use of industrial methods of food processing and enrichment with unhealthy fats and sweeteners. On the other hand, no information is required on allergens, which may pose a much greater risk to consumer health than the presence of energy and certain nutrients in foods.

This approach differs from that of the EU legislator where allergen information is mandatory for prepacked and non-prepacked food. On the other hand, to avoid unnecessary burdens on food business operators nutrition declaration is not required from certain categories of unprocessed foods or for which nutrition information is not a determining factor for consumers' purchasing decisions⁶⁹, as in the case of food directly supplied to the final consumer or local retail establishment. Thus, the EU has taken into account that food information requirements can impose significant administrative burdens on food businesses, especially small ones. However, as there are no distinct rules to foods sold within SFSC, farmers have to be well versed in EU and national regulations. Having no background, preparation or staff that would deal with this issue, their position is weaker compared to professional food businesses.

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⁶⁹ Recital 39 of Regulation (EU) 1169/2011.

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**MANDATORY FOOD INFORMATION
IN CASE OF SHORT FOOD SUPPLY CHAINS
AND LOCAL FOOD SYSTEMS IN EU AND US LEGISLATION:
A COMPARATIVE STUDY**

Summary

The study aims to identify what food information is required for the sale of food by farmers in short food supply chains (SFSCs) in EU law under Regulation (EU) 1169/2011 and legislation of selected Member States (Poland, Italy and France) which are allowed to adopt national measures in some issues. A comparison with US law serves as a benchmark for drawing conclusions, in particular, whether the requirements are appropriate and proportionate for SFSCs. The Regulation takes into account these alternative sales channels, as Article 44 only requires information on allergens when offering unpackaged food for sale to final consumers or mass caterers, or when foodstuffs are packaged in the sales room at the consumer's request or packaged for direct sale. However, Member States have adopted national measures imposing an obligation to provide, in writing, more information on food in the direct sale, such as the ingredients list, although not the nutrition declaration. The US

legislature is more restrictive as it requires not only ingredient lists but also nutritional information for nearly all packaged and unpackaged food products, except for agricultural raw materials. The multitude of obligations imposed at various legislative levels is undoubtedly a challenge for farmers involved in SFSC, who are not prepared on a par with professional food companies to implement them.

Keywords: food information, short food supply chains, direct sales, Regulation (EU) 1169/2011, US food labelling requirements

INFORMAZIONI ALIMENTARI OBBLIGATORIE IN CASO DI FILIERE ALIMENTARI CORTE E SISTEMI ALIMENTARI LOCALI NELLA LEGISLAZIONE DELL'UE E DEGLI STATI UNITI, UNO STUDIO COMPARATIVO

Riassunto

L'articolo si pone come obiettivo quello di identificare le informazioni alimentari obbligatorie che devono essere fornite nella vendita di alimenti nelle filiere alimentari corte (FAC) da parte degli agricoltori in conformità al regolamento (UE) 1169/2011 e in conformità alle normative di alcuni Stati membri (Polonia, Italia e Francia), ai quali è lasciata una certa discrezionalità rispetto ad alcune questioni. Il confronto con la legge statunitense serve come punto di riferimento per svolgere considerazioni, in particolare, in merito all'appropriatezza ed adeguatezza dei requisiti imposti per le FAC. Il Regolamento tiene conto di questi canali di vendita alternativi, in quanto art. 44 stabilisce come obbligatorie soltanto le informazioni sugli allergeni quando si offrono alimenti sfusi per la vendita ai consumatori finali o alla ristorazione collettiva, o quando i prodotti alimentari sono imballati nel locale di vendita su richiesta del consumatore o preimballati per la vendita diretta. Tuttavia, gli Stati membri hanno adottato misure nazionali che impongono l'obbligo di fornire, per iscritto, maggiori informazioni sugli alimenti nella vendita diretta, come l'elenco degli ingredienti, ma non la dichiarazione nutrizionale. Il legislatore statunitense è più restrittivo, poiché richiede non solo l'elenco degli ingredienti ma anche le informazioni nutrizionali per quasi tutti i prodotti alimentari confezionati e non confezionati, ad eccezione delle materie prime agricole. I molti obblighi informativi imposti a vari livelli legislativi rappresentano una sfida per gli agricoltori coinvolti nelle FAC, che non sono preparati ad attuarli quanto le industrie alimentari.

Parole chiave: informazioni sugli alimenti, filiere alimentari corte, vendita diretta, regolamento (UE) 1169/2011, requisiti per l'etichettatura degli alimenti negli Stati Uniti