



Food and Agriculture  
Organization of the  
United Nations

33

FOOD  
SAFETY  
AND  
QUALITY  
SERIES

ISSN 2415-1173



# EXPLANATORY NOTE ON THE GUIDELINES FOR DEVELOPING HARMONIZED FOOD SAFETY LEGISLATION FOR THE CCAFRICA REGION

(CXG 98-2022)

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**Required citation:**

FAO. 2025. *Explanatory note on the Guidelines for Developing Harmonized Food Safety Legislation for the CCAFRICA Region (CXG 98-2022)*. Food Safety and Quality Series, No. 33. Rome.

<https://doi.org/10.4060/cd7608en>

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ISSN 2415-1173 [Print]

ISSN 2664-5246 [Online]

ISBN 978-92-5-140300-6

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## ACKNOWLEDGEMENTS

The Food and Agriculture Organization of the United Nations (FAO) would like to thank the many people who were involved at various stages in the development of this publication.

The drafting of this explanatory note was carried out by Maud Cintrat from the Development Law Service at FAO.

We gratefully acknowledge the feedback and support of colleagues at the Agrifood Systems and Food Safety Division at FAO, in particular Blaise Ouattara, Catherine Bessy, Oumou Barry and Riccardo Siligato, as well as that of Lalaina Ravelomanantsoa from the Development Law Service at FAO.

The publication was edited by Dianne Berest, while graphic design and layout were provided by Studio Pietro Bartoleschi.

## ABBREVIATIONS

<b>CCAFRICA</b>	FAO/WHO Coordinating Committee for Africa
<b>FAO</b>	Food and Agriculture Organization of the United Nations
<b>FBO</b>	food business operator
<b>HACCP</b>	Hazard Analysis and Critical Control Point
<b>SPS Agreement</b>	Agreement on the Application of Sanitary and Phytosanitary Measures
<b>WHO</b>	World Health Organization
<b>WOAH</b>	World Organisation for Animal Health
<b>WTO</b>	World Trade Organization



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# CHAPTER 1

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# INTRODUCTION

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The *Guidelines for Developing Harmonized Food Safety Legislation for the CCAFRICA Region* (hereinafter referred to as “the Guidelines”), which are the subject of this explanatory note, were prepared by the FAO/WHO Coordinating Committee for Africa (CCAFRICA), with the aim of providing general guidance to facilitate the development or updating of food safety legislation in CCAFRICA countries.

## A. CONTENT OF THE GUIDELINES

The Guidelines for developing harmonized food safety legislation were drafted and adopted in 2022 as part of the work of the CCAFRICA. These Guidelines provide a foundation for a coordinated legislative approach to food safety, aiming to meet regional and international food trade standards, protect consumer health and promote fair commercial practices.

The purpose of these Guidelines is threefold. First, they aim to assist CCAFRICA Member Countries in establishing an effective food safety control system; that is, a set of tools designed to ensure the safety and wholesomeness of food placed on the market. A food safety control system is comprehensive, covering the entire chain from primary production to distribution, including processing, imports and exports, and involving all relevant stakeholders. It covers all stages of the food chain to ensure the safety of food, regardless of its origin. While respecting the flexibility granted to Member Countries in applying the precautionary principle, the system should include traceability, control obligations for producers and agrifood businesses, inspection responsibilities for public authorities, the allocation of responsibilities, and other key elements.

Second, the Guidelines aim to define key terms and set out general principles for developing legislation. Creating an effective food safety control system requires clear and consistent legislation. The Guidelines will assist Member Countries in developing and updating their food safety legislation. Such legislation is defined as including “acts, regulations, requirements, or procedures, issued by public authorities, related to foods and covering the protection of public health, the protection of consumers and conditions of fair trading” (FAO and WHO, 2022, p. 3). Therefore, legislation encompasses not only laws but also the entire legal framework related to food safety. In federal states, adopting legislation at the federal level offers the advantage of establishing a uniform framework, helping to eliminate state-level legislation that might hinder the movement of food between federal states.

Member Countries are free to adapt the main approaches and principles of these Guidelines to their legal systems, with a view to enhancing compliance and legal effectiveness. However, such adaptation should not impede the achievement of the third objective of the Guidelines, which is to facilitate intra-African and international trade in food. This explanatory note clarifies the degree of flexibility afforded to Member Countries in developing their legislation while aligning them with the international standards of the World Trade Organization (WTO).

## **B. PURPOSE OF THIS EXPLANATORY NOTE**

The purpose of this explanatory note is to support Member Countries in drafting food safety legislation, whether developing new legislation, adopting regulations or updating existing provisions. It is non-binding and is not intended to replace the Guidelines.

The note aims to foster harmonization of legislation among Member Countries by promoting a consistent interpretation of the Guidelines. It also clarifies whether the legislation is intended solely to serve a public-health purpose or whether, in addition to protecting consumer health, it seeks to safeguard economic interests, including fair commercial practices. CCAFRICA Member Countries and legislative drafters are free to use this note as they deem appropriate.

CCAFRICA Member Countries are under no obligation to justify a decision not to take into account or implement any particular element of this note. However, Member Countries that are also members of the WTO should incorporate the main principles of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement, 1994) to facilitate their participation in international trade.

## **C. OTHER SOURCES INFLUENCING THE DEVELOPMENT OF LEGISLATION**

International standards on food safety may be useful in supplementing the Guidelines and this explanatory note. The most relevant standards are those developed by the Codex Alimentarius Commission, with which the Guidelines are aligned. The SPS Agreement requires Member Countries to take into account the international standards, guidelines and recommendations of the Codex Alimentarius Commission (Article 12(4) of the SPS Agreement (1994)) with a view to harmonizing legislation and facilitating the development of free-trade connections. For example, for food safety, reference texts for the SPS Agreement include Codex Alimentarius codes and guidelines on hygiene, as well as standards, guidelines and recommendations concerning food additives, residues of veterinary drugs and pesticides, contaminants, and methods of analysis and sampling (Annex A, §3 of the SPS Agreement (1994)).

Some standards are referred to directly in the Guidelines, including the *Codex Alimentarius Procedural Manual* (FAO and WHO, 2024a), the *General Principles of Food Hygiene* (CXC 1-1969) (FAO and WHO, 2023), the *Code of Practice to Minimize and Contain Foodborne Antimicrobial Resistance* (CXC 61-2005) (FAO and WHO, 2021), and the *General Standard for the Labelling of Pre-packaged Foods* (CXS 1-1985) (FAO and WHO, 2024b). Other Codex Alimentarius standards are referenced in this note as examples where they may assist Member Countries in developing their food safety legislation. Not all Codex Alimentarius standards relevant to food safety are cited in full in this note.

Member Countries may also make use of other international standards, such as those of the World Organisation for Animal Health (WOAH), which address the safety of food of animal origin and the role of veterinary services in food safety systems.

## D. CHOOSING A TITLE FOR LEGISLATION

When choosing a title of their legislation, Member Countries may choose to introduce a further nuance beyond what is proposed in the Guidelines. The Guidelines use the terms “food safety legislation” and “food law” interchangeably. However, the two concepts are not identical, and it is important to clarify their respective scopes.

The concept of “food law” is broader in scope and includes food safety. Member Countries are considered to have adopted food law when the legislation in question contains provisions related to food and pursues both public-health and economic objectives.

By contrast, “food safety legislation” refers specifically to measures designed to ensure the safety of food intended for human consumption, with an emphasis on its harmlessness to health. Such provisions may have economic effects, but that is not their purpose.

The scope of “food safety legislation” is, therefore, narrower than that of “food law”, as considerations such as protecting consumers’ economic interests or ensuring fairness in commercial transactions fall outside its remit. Consequently, Member Countries enjoy greater flexibility when enacting food law rather than food safety legislation. Regardless of the approach chosen, a single piece of legislation on food or food safety enhances the effectiveness of food control, much like the coordination of the food control system, which will be discussed in the section [Institutional cooperation and coordination](#).



# CHAPTER 2

## EXPLANATORY NOTES ON THE DEFINITIONS

Part 4 of the Guidelines sets out definitions of key concepts in food law intended to be incorporated into legislation, as recommended in the sixth and final section of the Guidelines (“Elements of food safety legislation”).

Defining terms strengthens the reliability of the food safety system in several ways. At the national level, it helps ensure consistent use of terms throughout legislation texts and preserves their intended meaning in application. Clear definitions reduce discrepancies arising from misinterpretation and foster a proper understanding of obligations among stakeholders, leading to better compliance, including by food business operators (FBOs). This should enhance legal certainty for all operators subject to the legislation.

At the supranational level, clear and consistent definitions incorporated into national legislation enable true harmonization of food safety legislation. They also facilitate the assessment of equivalence and support trade between Member Countries. It is, therefore, appropriate to revisit the definitions already included in the Guidelines (A), and to review terms not defined therein but which merit distinction through dedicated definitions (B).

### A. DEFINITIONS ESTABLISHED IN THE GUIDELINES

The terms defined in the Guidelines are: competent authority, consumer, equivalence, food, food business, food business operator (FBO), food chain, food control, food control system, food safety, legislation, official control, requirements, risk, risk analysis, risk assessment, risk communication and risk management.

The terms are presented here in the following order: preliminary and generic terms (1), terms related to risk (2), terms concerning stakeholders (3), and finally terms related to controls (4).

## 1. PRELIMINARY TERMS

The definitions of the preliminary terms should be established first as they inform the understanding of the terms that follow. These are: food (a), food chain (b), food safety (c) and legislation (d).

### a. Food

“Any substance, whether processed, semi-processed or raw, which is intended for human consumption, and includes drink, chewing gum and any substance which has been used in the manufacture, preparation or treatment of ‘food’ but does not include cosmetics or tobacco or substances used only as drugs.”

#### *Scope of the concept*

Accurately defining the concept of food, which is equivalent to foodstuff, is crucial as it determines the scope of food safety legislation. The definition covers any substance consumed by humans at any stage of processing; not only everything intended to be eaten but also any substance used in its production. However, CCAFRICA Member Countries should be mindful of two points.

#### *Residues of pesticides and veterinary medicines*

It is important to clarify from the outset that a distinction should be made between pesticides, plant protection products and biocides.

A pesticide is intended to prevent, suppress, or control harmful organisms or diseases and to protect plants or plant products during production, storage and transport. Pesticides include plant protection products (also called plant protection substances or phytosanitary products) and biocides. Plant protection products are specifically intended to protect crops and plants. They are not, for instance, used during storage or transport. Biocides are intended to destroy, repel or neutralize harmful organisms, mitigate their effects, or combat them by means other than physical or mechanical action. When applied to plants, biocides are considered pesticides. However, their use is not limited to plants. For example, they may be used to disinfect barns or treat harvested crops, and they may be used in veterinary hygiene (such as disinfectant soaps used on animals) or even in human hygiene (such as disinfectants).

When any such products are used, they may leave residues in food. These residues may be classified as food, unless explicitly excluded from its scope. This point is particularly relevant given that the definition does not refer to the intentional addition of the substance during the production, manufacture, preparation or processing of the food.

The same applies to residues of veterinary drugs that may be found in foods of animal origin. In the absence of a specific classification, such residues could fall within the definition of “food”. To prevent this, Member Countries may choose to expressly exclude these substances from the definition of “food”, as is done for tobacco and medicinal products. Alternatively, Member Countries may specify that food refers only to what is edible.

### *Distinction between food and food supplements*

Member Countries should also be aware that the definition of food includes food supplements. These are concentrated sources of vitamins, minerals and other nutrients that may also be obtained from a normal diet. Specific legislation may be adopted to impose particular safeguards on the use of these products, notably through appropriate and adequate labelling or a prior declaration before they are placed on the market.

### **b. Food chain**

“Production to consumption continuum including primary production (food-producing animals, plants/crops, feed), harvest/slaughter, packing, processing, storage, transport, and distribution to the point of consumption.”

### *From the food chain to an integrated legal approach*

The concept of food chain forms the basis of the integrated legal approach to food safety. This holistic approach aims to minimize health risks for the consumer. Member Countries that adopt an integrated approach to food safety should develop legal provisions covering the entire food chain to ensure the safety of food intended for consumption. This encompasses all stages involved in bringing a food product to market, from primary production to distribution, including import, processing, storage, transportation, sale and delivery to the final consumer.

### *Activities covered by the concept of food chain*

The concept of food chain sets the scope for food safety legislation. It is, therefore, important that Member Countries explicitly specify all the activities covered by the law that go beyond food production or processing.

Member Countries may determine the degree of integration they wish to apply. Thus, food legislation may be extended to cover all provisions that have an indirect effect on food safety. This may include the regulation of materials and articles that come into contact with food, as well as pesticides and fertilizers used in primary production. It is also in the interest of public health to regulate the production, manufacture, processing, transport and sale of feed intended for animals raised for human consumption, including when such feed contains products of animal origin. Legislation on the basis of an integrated approach may also cover animal health, including the use of antimicrobials, and animal welfare, whether or not limited to animals whose products are intended for food, if these factors affect the safety of foods of animal origin. An integrated approach also encompasses the entire food production process, from farm to export. When a Member Country decides to implement an integrated approach to food safety through its legislation, this also extends to the export of food. Consequently, the safety of food for domestic consumption must be equivalent to that of food for export.

### *How is an integrated approach reflected in legislation?*

An integrated approach is reflected in the obligations laid down for all operators involved in the production of a food item. For foods of plant origin, obligations may be established for operators in the fertilizer, plant protection product, seed and plant production sectors. For foods of animal origin, obligations may be detailed for operators in the veterinary drug, animal feed and animal breeding or genetic improvement sectors, as well as in animal production itself. Regardless of the type of food, obligations also apply to operators in the processing, distribution, retail and catering sectors, as well as to packaging and labelling suppliers.

Among the obligations that may be incumbent on operators, Member Countries may require product or batch identification, traceability, controls, and the recall of unsafe products. However, since the food chain ends at final consumption, Member Countries should avoid imposing obligations on food sector professionals at a stage where they can no longer fulfil them, especially when the food is consumed after handling by the final consumer. At this stage, Member Countries may implement public policies to inform and educate citizens about good hygiene and food storage and preparation practices and may involve food business operators in the development of such policies (see [Clear definition of the roles and responsibilities of public and private stakeholders](#)).

### **c. Food safety**

“The assurance that food will not cause adverse health effects to the consumer when it is prepared and/or eaten according to its intended use.”

### *Food security and food safety*

Food safety, considered one aspect of food security, is defined as “when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life” (*Rome Declaration on World Food Security*, 1996). Food safety represents the health dimension of food security, referring specifically to the safety of food for human consumption. It does not include the concepts of availability or access to food.

### *Scope of food safety*

The concept of food safety implies that consumers should not suffer harm as a result of eating food. This aspect of the concept requires clarification. The broad wording could be interpreted as including harm sustained by a consumer due to a food allergy. The definition proposed in the Guidelines, drawn from the *General Principles of Food Hygiene* (CXC 1-1969) (FAO and WHO, 2023), is primarily technical rather than legal in nature and may not be suitable for direct incorporation into national legislation or regulation.

#### d. Legislation

“Includes acts, regulations, requirements, or procedures, issued by public authorities, related to foods and covering the protection of public health, the protection of consumers and conditions of fair trading.”

Two points should be taken into consideration regarding the definition of legislation on food safety.

##### *Legislation as a set of rules*

This definition makes it clear that legislation does not necessarily consist of a single normative act in the form of a law, given the diversity of sectors involved in ensuring food safety. What laws, regulations, requirements and procedures have in common is their binding nature, and all of these instruments together constitute legislation. A law may establish the general requirements for food safety and be supplemented by other, more technical normative acts, such as those related specifically to hygiene controls, food labelling, or packaging. The law is designed to be complemented by regulations, which are institutionally defined as acts adopted by the regulatory authority. These also include specific and technical implementing texts, as well as administrative instruments, such as circulars, which set out provisions and procedures issued by administrative authorities.

##### *Exclusion of private voluntary standards from the scope of legislation*

Only a public authority is empowered to develop standards falling within the scope of food safety legislation. This point is particularly important in the food sector, given the economic power that agrifood companies can wield. Consequently, labels and other private voluntary standards, through which companies establish their requirements and assurance methods, are not intended to form part of the legal and regulatory framework on food safety.

##### *Defining the purpose and scope of legislation*

Defining food safety legislation helps clarify its scope and intended objectives. It is important to note that the Guidelines use the terms “food safety legislation” and “food law” interchangeably. However, these terms are not synonymous. Food safety legislation is specifically intended to address the safety of food. This supports the view that such legislation should have a narrower scope than food law, as it is dedicated exclusively to food safety. In this context, the objectives expressly identified should be strictly health related, with the sole aim of protecting public and animal health. Economic objectives arise only if a Member Country chooses to develop a food law. Finally, the objectives of protecting public health, safeguarding consumers’ economic interests and ensuring fair competition among industry stakeholders, as outlined in the Guidelines, may be regarded as non-exhaustive objectives of food law. Other ancillary objectives, such as environmental protection or the preservation of animal health and welfare, may, therefore, complement them.



## 2. DEFINITIONS RELATED TO RISK

It is important to expand on the concepts of risk (a) and risk analysis (b), the latter of which includes risk assessment, risk management and risk communication.

### a. Risk

“A function of the probability of an adverse health effect and the severity of that effect, consequential to a hazard(s) in food.”

Risk characterization involves providing a qualitative or quantitative estimate of the probability and severity of adverse health effects that may occur in a given population on the basis of hazard identification, hazard characterization and exposure assessment, while taking into account the uncertainties associated with the risk assessment.

A hazard is defined as “a biological, chemical, or physical agent in, or condition of, food with the potential to cause an adverse health effect” (FAO and WHO, 2024a, p. 104). Hazards also include allergens that may be present unintentionally due to cross contamination.

## b. Risk analysis

“A process consisting of three components: risk assessment, risk management and risk communication.”

### *Risk analysis as the foundation of legislation*

Risk analysis is intended to underpin laws and public policies related to food control, as well as risk prevention and management measures, in order to protect consumers. Internationally, risk analysis is understood to comprise three core components: risk assessment, risk management and risk communication. Defining these concepts helps to ensure a robust scientific basis for risk assessment. It also helps clarify whether public intervention is preventive or precautionary in nature. Regarding risk management, the definition usefully specifies that preventive measures may be adopted alongside control measures. Finally, for risk communication, providing a definition helps to identify stakeholders, including consumers, who might otherwise be excluded from such communication in order to minimize economic disruption to industry. Indeed, when consumers become aware of a zoonosis, it can have a significant impact on the economy of the affected sector.

### *The three components of risk analysis: assessment, management and communication*

The Codex Alimentarius Commission (FAO and WHO, 2024a) defines the components of risk analysis as follows:

- > risk assessment is defined as “a scientifically-based process consisting of the following steps: (i) hazard identification, (ii) hazard characterization, (iii) exposure assessment, and (iv) risk characterization” (FAO and WHO, 2024a, p. 104).
- > risk management is “the process, distinct from risk assessment, of weighing policy alternatives, in consultation with all interested parties, considering risk assessment and other factors relevant for the health protection of consumers and for the promotion of fair-trade practices, and, if needed, selecting appropriate prevention and control options” (FAO and WHO, 2024a, p. 105).
- > risk communication is defined as “the interactive exchange of information and opinions throughout the risk analysis process concerning risk, risk-related factors, and risk perceptions, among risk assessors, risk managers, consumers, industry, the academic community, and other interested parties, including the explanation of risk assessment findings and the basis of risk management decisions” (FAO and WHO, 2024a, p. 105).



### 3. DEFINITIONS RELATED TO FOOD SAFETY STAKEHOLDERS

This section considers the concepts of consumer (a), food business (b), food business operator (c) and competent authority (d).

#### a. Consumer

“Persons and families purchasing and receiving food in order to meet their personal needs.”

A consumer is generally understood as the person who consumes. However, as the Guidelines note, the consumer is not necessarily the person who actually eats the food. Rather, the consumer is the one who obtains the food from a third party. The Guidelines include both persons and families who purchase food within this concept.

Member Countries must ensure that, where necessary, certain aspects of the definition of consumer are also legally defined. Accordingly, the terms “person” and “family” should be defined under the civil law of the Member Countries. If they are not, it may be useful to clarify the scope of these concepts.

#### *The importance of legally defining the “consumer”*

It should first be noted that the consumer, as defined in the Guidelines, refers to the final consumer, as indicated by the phrase “to meet their personal needs”. This does not include persons who use food in the context of a food business operation or activity. Nor does it include a person offering one or more food items for resale. In short, anyone who does not intend to consume the food cannot be considered a consumer.

However, it is important to note that the Guidelines are not intended to limit consumer protection solely to those who ingest the food. They aim to include anyone who purchases or receives food for personal consumption. This has two implications.

First, Member Countries must take care not to restrict how consumers may obtain food, as this could exclude specific methods that nonetheless result in ingestion. By referring to acts of purchase and receipt, the Guidelines broaden the notion of “consumer” to cover all situations in which a person comes into possession of food, whether free of charge or for payment, or as part of a food service. For example, if the law defines as “consumer” only as the person who purchases the food, anyone receiving food free of charge would, by definition, be excluded and not protected by the law. Furthermore, Member Countries should ensure that situations where someone produces the food themselves are not erroneously included. For example, a person who eats eggs from their own hens would not fall within the scope of the law as a “consumer”, since they have neither purchased nor received the food.

Next, the Guidelines aim to protect consumers even if they have not ingested unsafe food. In this way, a person who suffers purely economic harm due to the unsafe nature of food they have purchased or received free of charge would still benefit from the compensation mechanisms provided by law, even if they have not suffered harm to their health as a result of ingestion.

### *The importance of legally defining a “person”*

Second, Member Countries must determine whether their national law defines the concept of “person”, to clarify its legal implications for the scope of the term “consumer”. For example, if a foetus is recognized as a person, it could be considered a victim of foodborne illness and eligible for compensation on that basis. It may also be possible to bring proceedings for involuntary manslaughter against the seller of the food that caused the foodborne illness resulting in the death of the pregnant woman or the unborn child, or both. The legal consequences can be significant. It is, therefore, essential to clarify the legal scope of the notion of a person.

### *The importance of legally defining a “family”*

The concept of family may refer to various situations: a married couple, a cohabiting couple, a couple with one or more children, a couple with children and grandparents, or persons living under the same roof. If the country’s civil law does not recognize the legal personality of the family, using this concept and defining it in food safety legislation could create confusion. It is difficult to justify defining a civil-law concept within a specialized legislative text intended for a limited area of activity. Furthermore, such a definition would have no practical relevance for the scope of obligations imposed on food business operators, who are required to provide safe food regardless of the identity of the final consumer. In the absence of a civil-law definition of family, food safety legislation would also need to address the procedural implications of this concept, such as the implementation of collective actions, actions brought by one member on behalf of the group, or a single compensation award. In such cases, it would be preferable to simplify the approach and refer only to the notion of “person”.

## b. Food business

“Any undertaking, whether for-profit or not, public or private, carrying out any of the activities related to any stage of production, processing and distribution of food.”

### *The need to define the concept of business*

Alongside the food business operator, it is also important to define the concept of food business. In English, the relevant operator is referred to as a “food business operator”, while the business itself is called a “food business”. This implies that the operator is the individual who works within a food business. However, in French, an operator is someone who works in the food sector but not necessarily within a business structure. Therefore, defining the concept of food business helps clarify the scope of the term “operator”, at least in English. In this context, Member Countries may determine that the production, processing or distribution of food is not carried out as part of a food business. In such cases, the food business operator would be acting outside the scope of any food business structure. Additionally, the concept of a food business helps define the scope of the law, particularly whether it is intended to apply to institutions that provide food to groups of people, such as canteens, by distinguishing them from food businesses.

### *The scope of the concept*

If Member Countries choose to define the concept of a food business, it could be formulated as follows: “any undertaking, whether for-profit or not, public or private, carrying out any of the activities related to any stage of production, processing and distribution of food.” The activities concerned can also be specified, indicating that the term refers to enterprises engaged in the production, manufacture, processing, packaging, labelling, transport, handling, serving, storage or sale of food.

## c. Food business operator (FBO)

“The entity responsible for operating a business at any step of the food chain.”

### *Key aspects of the concept*

The definition of food business operator is crucial for ensuring compliance with legislation and preventing any dilution of responsibility that could harm consumer health. The purpose of the law is to establish an effective national food safety control system, and to that end, it imposes obligations on food businesses to ensure that food placed on the market is safe. Any breach of an obligation or fault results in liability for both the operator and the business. However, the primary aim of the law is not to penalize businesses that fail to meet their obligations but rather to guarantee the safety of food placed on the market.

To strengthen control over food placed on the market and thereby improve compliance with legislation, businesses are required to designate a person who is responsible for ensuring compliance with legal and regulatory food safety requirements.

### *Scope of the concept*

It appears that the operator is simply defined as the entity that operates, which can make it difficult to differentiate the operator from the business. It is only later that the directives recommend that the operator ensure compliance with the legislation ([third principle](#)). It would be preferable to specify this when defining the operator. In short, the food business operator is the person designated by the business as being responsible for ensuring compliance with food safety legislation. Member Countries should pay particular attention to this point: the person with legal responsibility for compliance must be genuinely empowered to make and enforce decisions, ensuring that the protection of consumer health takes precedence over the business's economic interests. In practice, Member Countries may choose to assign this role to persons with decision-making authority within the business, namely the holders of the capital or their appointed representatives.

### *Natural and legal persons*

As with the concept of family, if the choice is to specify that the operator can be either a natural or legal person, this distinction should already be established under Member Countries' civil law. Introducing this distinction in specific food safety legislation would be inappropriate, as it could create inconsistencies within the Member Countries' legal systems and lead to legal uncertainty for both those subject to the law and the judiciary. If a Member Country's legal framework provides for a different distinction, it is essential to ensure that it can effectively assign responsibility for compliance with food safety legislation within a food business. Regardless of the approach taken, the person responsible for compliance must be clearly identifiable and duly empowered by the business to perform their role.

## **d. Competent authority**

“The government authority or official body authorized by the government that is responsible for setting of regulatory food safety requirements and/or for the organization of official controls including enforcement.”

### *A generic concept*

Using the term “competent authority” is crucial when drafting legislation. The articles of the law should refer to the competent authority in general terms rather than specifying a particular body. Only one article should designate which authority is responsible for this role. The advantage of this approach is that if the competent authority changes, only that single article needs to be amended.

This helps reduce the risk of inconsistencies in legislation arising from outdated provisions. In addition to designating the competent authority, the law should define its functions and powers. Other practical details related to the authority, such as its composition, the procedures for appointing its members, and the duration of their terms, may be set out in regulations.

### *The development of regulatory requirements or the organization of official controls*

Care should be taken when defining the scope of the competent authority's responsibilities. The competent authority referred to in the Guidelines must be clearly distinguished from the competent authority as defined in the legislation. In principle, the competent authority designated in legislation is the body responsible for monitoring compliance with legal and regulatory requirements. Where the text refers to the "official body authorized by the government", this authority may be an agency or other entity established by public authorities and specifically dedicated to food safety.

It is also common for this role to be assigned to a ministry, such as the agriculture, industry or health ministry, or more specifically to a ministerial department or service. In this context, the authority may also set out the regulatory requirements that enable the implementation of the provisions of the food safety legislation. However, this power derives from the regulatory authority conferred upon it under the constitution or highest legal framework applicable in the national territory, rather than from its designation as the competent authority under food safety legislation. This means that if the competent authority is an independent body created by public authorities and specifically dedicated to food safety, it will have the power to organize official controls but not to establish regulatory requirements in this area.

In summary, the Guidelines use the term "competent authority" to refer to the body that may develop regulatory requirements and organize official controls, although under food safety legislation these functions may be assigned to separate entities.

### *The competent authority as the source of "requirements"*

Requirements are defined as "criteria set down by the competent authorities relating to trade in foodstuffs covering the protection of public health, the protection of consumers and conditions of fair trading" (FAO and WHO, 2022, p. 3).

This definition of requirements serves a dual purpose. First, it helps identify the institutional origin of the rules: only criteria established by public authorities are regarded as binding requirements. Therefore, private standards voluntarily developed by producers or industry, do not carry binding force. Second, the definition highlights the binding nature of the requirements imposed by public authorities. This concept is not intended to form part of the definitions set out in the law.



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#### 4. DEFINITIONS RELATED TO CONTROLS

The following concepts should be considered: food control (a), official control (b), food control system (c), and equivalence (d).

##### a. Food control

“A mandatory regulatory activity of enforcement by national or local authorities to provide consumer protection and ensure that all food during production, handling, storage, processing, and distribution are safe, wholesome, and fit for human consumption; conform to food safety and quality requirements; and are honestly and accurately labelled as prescribed by the law.”

The scope of control extends across the entire food chain, from raw materials to final distribution. The purpose of control is to ensure the safety of food intended for human consumption. In general, food control can be carried out by either public authorities or food business operators. However, under the Guidelines, this second option is excluded, aligning the concept of food control more closely with that of official control.

## b. Official control

“Any form of control that the competent authority performs for the verification of compliance with food law, including animal health and animal welfare rules.”

Official control is a form of food control. It is a key element in ensuring food safety and builds on the development of legislation and regulation in this area. It is also a necessary prerequisite for any enforcement action in the event of a breach of legislation. Official control must be carried out by a public authority and aims to identify violations of legal or regulatory provisions. The form of control may vary: it may involve the review of documents, visual inspections, or the collection of samples for product analysis. Whatever the subject of the law, official control verifies compliance with its provisions, including, where applicable, those related to animal health or welfare. However, food safety legislation is not intended to regulate animal health or welfare, even though these areas are closely related. This definition illustrates that food legislation can also help safeguard animal health and welfare.

## c. Food control system

“The integration of a mandatory regulatory approach with preventive and educational strategies that protect the whole food chain.”

This system, designed to control food, has two dimensions: the first is mandatory, while the second is, by implication, voluntary and focused on prevention and education. The mandatory component applies to producers, food business operators and the institutions responsible for their oversight, while the preventive and educational strategy is more consumer oriented, thereby encompassing the entire food chain.

## d. Equivalence

“The capability of different inspection and certification systems to meet the same objectives.”

Equivalence is a principle established in the Guidelines. Reference should, therefore, be made to the relevant sections that address this topic (see the section entitled [Equivalence](#)). In this context, equivalence is to be distinguished from identity and harmonization.



## B. DEFINITIONS NOT INCLUDED IN THE GUIDELINES

The concepts defined in the Guidelines are intended to support the interpretation of those same Guidelines. They are not necessarily intended to be incorporated into food safety legislation. This applies, for example, to the concepts of equivalence and requirements. Additionally, certain concepts are not developed in the Guidelines, even though they may be of interest. These include feed, placing products on the market, [traceability](#) and the [precautionary principle](#).

### 1. THE DISTINCTION BETWEEN FOOD AND FEED

#### *The significance of this definition*

CCAFRICA Member Countries could consider defining the concept of feed. It is clear that the concept of food chain includes the production of feed for food-producing animals and feed for non-food-producing animals. This inclusion is justified by the integrated and comprehensive nature of food safety, as demonstrated by practical experience.

#### *Scope of the concept*

The concept of feed could be described as encompassing any substance or product, including additives, whether processed, partially processed or unprocessed, intended for oral consumption by animals. This concept could apply only to animals used for food production if the legislation is aimed solely at protecting human consumers of foods of animal origin. However, such a distinction risks creating confusion and opening the door to fraud.

It is worth noting that the terms “food” and “feed” are sometimes used synonymously. When referring in French to «aliments pour animaux» (“food intended for animals”), the full term must always be used. This clarification is not necessary in English, as the distinction is already made between “food” (for human consumption) and “feed” (for animal consumption).

### *Distinctions*

The concept of feed should be distinguished from veterinary medicinal products (substances or combinations of substances that are presented as having either curative or preventive properties in relation to animal diseases or intended for use in animals or administered to them to restore, correct or modify physiological functions by exerting a pharmacological, immunological or metabolic action; or intended for use in animals to make a medical diagnosis; or to euthanize animals) and from medicated feed (feed in which veterinary medicinal products are incorporated to facilitate their administration to animals).

### *How to factor in animal feed?*

Feed regulation can be incorporated into food safety legislation. The inclusion of feed should be clearly stated in the title of the law and reflected in each article, indicating whether the obligations apply to food intended for both human and animal consumption or are specific to feed.

If feed is not included in food safety legislation, a separate legal text could be dedicated to it. Whichever option is chosen, defining the concept of feed within food safety legislation would help distinguish between the two areas and clarify that specific rules apply to each sector, thereby protecting both animal health and consumer health from risks associated with foods of animal origin.

## **2. THE CONCEPT OF PLACING A PRODUCT ON THE MARKET**

### *Placing a product on the market as the starting point of accountability*

Among the concepts that Member Countries would benefit from defining in their food safety legislation is that of placing a product on the market or putting it into circulation. The point at which food is made available to the public is critical for determining the liability of operators under food safety legislation that establishes obligations for producers and industries in the food sector. Indeed, if operators are prohibited from placing unsafe food on the market, it is essential to determine the moment at which the food is actually made available.

### *Scope of the concept*

The concept of placing a food product on the market may be described as the holding of food with a view to its sale, including offering it for sale or any other form of transfer, whether free of charge or for payment, as well as sale and distribution.

Food made available on the market may also be considered food put into circulation, meaning food that the producer has voluntarily made available.

Food may also be regarded as placed on the market when it is transferred for the purpose of distribution, consumption or use on the national market, irrespective of whether this is in the context of a commercial activity.



### *The need to improve legislation*

The concept of placing a product on the market does not extend to products that remain in a producer's stock. Otherwise, a product held in stock would be regarded as placed on the market and would therefore be required to comply with the legislation in force at the time it was "placed on the market". As a result, if a given Member Country intends to strengthen its legislation, a producer could bypass the new rules for longer than necessary by stockpiling large quantities of products manufactured under the previous legislation. This potential barrier to compliance with new legislation, in the absence of a definition of placing a product on the market, is less significant in the case of perishable products.

### *The need to ensure compliance with legislation*

Compliance with food safety legislation is required as soon as a food product is transferred for distribution, meaning that operators may already be subject to obligations related to placing the product on the market before it leaves the warehouse. This is the case, for example, with the obligation to inform the competent authorities immediately if the person responsible for this considers that the food they have placed on the market may be harmful to human health.

### *The importance of legal certainty*

Defining the scope of this concept ensures legal certainty for economic operators, both in relation to the obligations they must meet and in situations where individuals may have obtained the food in question unlawfully, for instance, through theft or by recovering food waste. For all these reasons, Member Countries should take particular care when defining the scope of the concept of placing products on the market.



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# CHAPTER 3

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# RECOMMENDATIONS FOR STAKEHOLDER CONSULTATION AND APPLYING PRECAUTIONARY MEASURES

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Although these are not, strictly speaking, legal principles, the Guidelines nonetheless recommend organizing a public stakeholder consultation (A) and applying precautionary measures (B).

## A. STAKEHOLDER CONSULTATION

The Guidelines encourage Member Countries to conduct a public consultation when drafting or revising their legislation. This process should involve consumers, producers, representatives from the food industry, consumer associations, non-governmental organizations, researchers, academia and any other relevant stakeholders. The relevance (1) and practical arrangements (2) of the consultation process should be clearly outlined.

### 1. KEY CONSIDERATIONS IN THE CONSULTATION PROCESS

An open consultation with stakeholders serves several important purposes.

#### *Increased confidence in the legislative drafting system*

In general, consulting stakeholders helps foster greater trust in the legislative drafting process. When stakeholders are informed and involved, they are more likely to understand and accept the choices made by the public administration and the

legislature. When a public administration develops a standard through consultation with stakeholders, it gains both greater legitimacy and stronger compliance.

### *Increased confidence in the food safety system*

Consulting consumers reinforces the democratic nature of the legislative drafting process and helps build public trust in the resulting national food safety system. Soliciting the views of producers and industry serves to inform the administration about actual practices, which may give rise to innovative solutions and, more broadly, foster better compliance with the law.

### *A degree of critical analysis*

The participation of consumer associations and non-governmental organizations helps provide a degree of organized, critical analysis of the practices of agrifood professionals or consumers. Consulting the research and academia sectors helps provide a scientific basis and informs the administration about the scientific issues involved in the draft legislation. Member Countries could identify public or private institutions, as well as individuals, who should be consulted. It may also be helpful, if state agencies are to be involved in implementing the law, to consult them during the preliminary stages. This would help identify potential issues early in the legislative process, allowing for the development of appropriate responses or solutions.

Consultation arrangements must be clearly defined and firmly established. In practice, these arrangements may vary depending on the stakeholders consulted.

## **2. CONSULTATION ARRANGEMENTS**

### *Openness and transparency of the consultation*

It is essential that any consumer consultation be conducted in an open and transparent manner. In this context, transparency means that the administration must provide information on the purpose of the consultation, how it is conducted, the results obtained and how the information gathered is processed.

The timing and arrangements for the consultation, including, in particular, a schedule that allows for a reasonable response period, the draft text and an explanatory note, must be designed to enable the broadest possible participation on an equal and impartial basis.

A consultation will not yield the intended benefits if only certain population groups are consulted, or if the results of the consultation with industry stakeholders are not made public. However, consultations with producers may be conducted through trade unions or producer representatives, where such bodies exist. Similarly, consultation with research and academia may be limited to hearings involving selected experts in the relevant field.



### *Impartiality of the consultation*

Whatever consultation arrangements are chosen, Member Countries should ensure that the data collected are transparent, and that equality and impartiality are maintained. Members should also take steps to prevent the distortion of outcomes by multiple responses submitted by the same individual, or by input from individuals outside the scope of the consultation, such as consumer associations taking part in a consultation intended for producers. In this respect, it may be effective to consult all stakeholders as part of an impact assessment, the results of which could then be analysed and widely disseminated. It would also be useful to assess more broadly the potential social, administrative, budgetary, economic and other impacts of the law in question to gauge the likelihood of its effective implementation.

### *Scope of the consultation: during the initial drafting or at each stage of legislative revision*

With regard to the consultation process, it is advisable to determine in advance whether stakeholder consultations will take place only during the initial drafting of the legislation or also during subsequent revisions of food legislation. If Member Countries choose to hold consultations when revising legislation, they may make an exception if the urgency of the matter leaves insufficient time for consultation.

Section B explores the application of the precautionary principle, as recommended in the Guidelines.



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## B. IMPLEMENTATION OF THE PRECAUTIONARY PRINCIPLE

The Guidelines also recommend the implementation of precautionary measures, stating that “in cases where relevant scientific evidence is insufficient, a member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information. Member Countries should seek to obtain the scientific information necessary to reduce uncertainty and justify provisional measures” (FAO and WHO, 2022, p. 4).

### *What is the precautionary principle?*

The precautionary principle serves as the basis for adopting measures to manage uncertain risks. Thus, when the assessment of scientific data reveals only the possibility of harmful effects on health, and scientific uncertainty remains, the precautionary principle provides grounds for adopting measures to manage that risk. This principle may be applied when scientific data are incomplete (in quantitative terms) or ambiguous (in qualitative terms). However, it is nevertheless appropriate to adopt measures to manage the hypothetical risk so as to safeguard consumer health. This principle is enshrined in Article 5.7 of the SPS Agreement (1994), enabling Member Countries to adopt sanitary measures even in the absence of sufficient relevant scientific evidence.

### *Conditions for applying the precautionary principle*

Four conditions arise from the precautionary principle outlined in Article 5.7 of the SPS Agreement: there must be relevant scientific evidence; the sanitary measure must be adopted on the basis of that evidence; the country must continue to seek additional scientific evidence; and the measure must be provisional. Under no circumstances may the precautionary principle be used to justify disguised protectionism. The provisions that must be included in legislation are, therefore, those recommended in the Guidelines, namely that provisional risk management measures may be adopted where scientific data indicate possible harmful effects on health, even if scientific uncertainty remains.

### *What is the scope of measures adopted under the precautionary principle?*

It is essential to clearly define how the precautionary principle is to be applied, thereby avoiding the creation of unnecessary trade barriers. The SPS Agreement permits Member Countries to adopt only provisional measures and obliges them to continue gathering scientific evidence to enable a more objective risk assessment. This requirement implies that the sanitary measure must be re-evaluated within a reasonable timeframe. Risk management measures adopted in response to risks subject to scientific uncertainty are, therefore, provisional. The period of application for these measures must be explicitly specified at the time of their adoption. It must be reasonable on the basis of the nature of the identified risk and the type of scientific information required to reduce uncertainty. If, come the expiry date, the data are still incomplete or ambiguous, the measures may be extended until the risk assessment is completed, as the precautionary principle remains applicable for as long as scientific uncertainty persists. Where the scientific assessment reveals that there is ultimately no risk, the measures must be repealed. Conversely, if the assessment confirms the risk, risk management measures may be adopted. The type of measures that may be adopted, as well as the authority responsible for adopting them, must be specified in advance by law. Such measures may include suspending the product's placement on the market or withdrawal from sale.



# CHAPTER 4

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## GENERAL PRINCIPLES OF FOOD SAFETY LEGISLATION

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This section aims to clarify the guiding principles set out in the Guidelines. Member Countries are encouraged to take these principles into account, alongside their own legislative practices and national needs. This section addresses the protection of consumer health (A), principles specific to the food sector (B), those related to public and private stakeholders (C), and those concerning the development of legislation (D).

### A. PROTECTION OF CONSUMER HEALTH AS A TOP PRIORITY

**Principle 1.** “Food safety legislation should have provisions for protecting the health of consumers as a primary priority.”

#### *Different forms of consumer health protection*

The Guidelines recommend that CCAFRICA Member Countries develop food safety legislation that prioritizes consumer health. The implementation of this top priority, the protection of consumer health, may take various forms in food safety legislation. It is reflected, first and foremost, in the statement of the objectives set out in the legislation. It then takes the form of a provision that explicitly requires food to be safe. It also provides the basis for developing prevention, precautionary and risk management measures. Finally, it must guide the assignment of roles and responsibilities.

#### *Protecting consumer health as an objective of the legislation*

Member Countries may, in the opening articles of the legislation defining its purpose (regulating the manufacture, primary production, sale, import and export of food) and its objectives, explicitly state the goals the law seeks to achieve. When developing or revising a general food law, rather than a law focused exclusively on food safety, they may also include additional aims, such as safeguarding consumers’ economic interests or promoting fair commercial practices, alongside the protection of consumer health. In such cases, however, it is essential to affirm the primacy

of consumer health. This is critical, as courts may rely on this provision when interpreting other parts of the law that may be disputed. Without an explicit statement that health protection takes precedence, judicial interpretation might weigh economic and health interests equally, potentially prioritizing economic concerns over health. Clearly stating, in the purpose and scope of a food law, that its primary objective is to protect consumer health helps ensure that this objective is effectively achieved. The sole objective of food safety legislation must be the protection of health.

### *The principle of food safety*

The purpose of incorporating the principle of food safety is to anchor the food safety system in the notion of prevention: food that may be harmful to human health must be prevented from reaching the market. Member Countries may, therefore, choose to state in general terms that only food that does not endanger consumer health may be placed on the market (a prohibition-based formulation). Alternatively, they may adopt a positive approach, establishing an obligation for all food businesses to put on the market only food that is safe for consumers. It is preferable to define the scope of this principle broadly so that it applies to all food present in the national territory, whether produced domestically, imported or exported. Member Countries could, therefore, provide a precise definition of what constitutes a harmful or unsafe food for consumers. In addition to food contaminated during production or spoiled or decomposed food, the definition could include food whose consumption may be harmful to consumers, or that may have cumulative toxic effects.

## **B. LEGISLATION BASED ON PRINCIPLES SPECIFIC TO THE FOOD SECTOR**

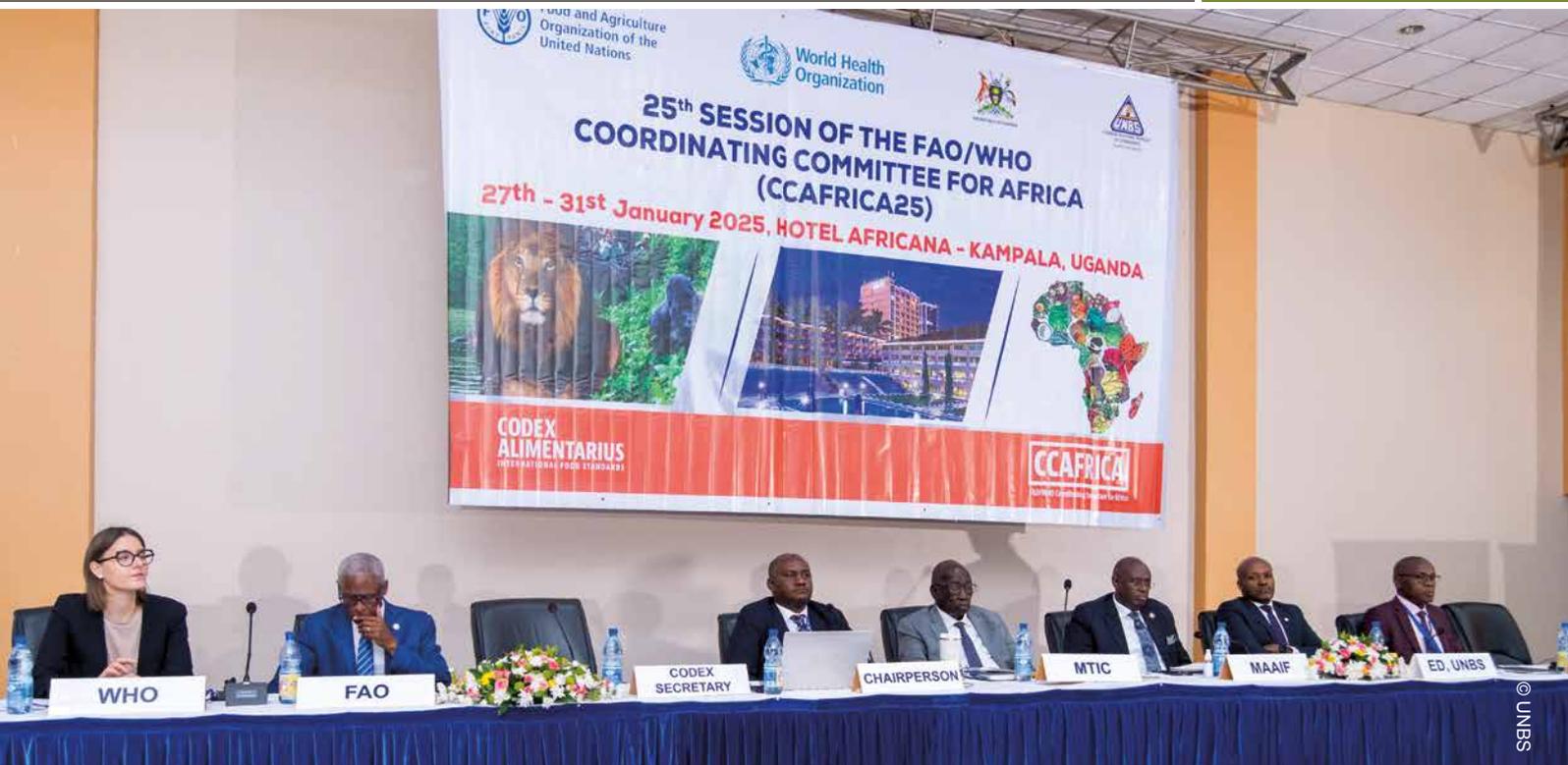
Legislation should be based not only on an integrated approach to the entire food chain, from primary production to food consumption, in line with the second principle of the Guidelines (1), but also on science and risk, in line with the fourth principle (2).

### **1. A FOOD CHAIN-BASED APPROACH**

**Principle 2.** “The food safety legislation should cover the entire food chain from primary production to consumption.”

#### *The food chain-based approach as a tool for risk prevention*

When developing a food chain-based approach, Member Countries should focus sanitary measures on risk prevention, as this is more effective in the field of food safety than risk management. When Member Countries impose obligations on all actors along the food chain, the likelihood of harmful food being placed on the market is reduced. The value of this approach lies in involving all stakeholders in the implementation of a comprehensive risk prevention strategy.



### *The food chain approach in support of cost reduction*

This approach also helps to reduce costs. Identifying unsafe food at the earliest stages of production avoids unnecessary expenditure on processing, packaging and transport (and possibly on withdrawal or recall), as well as on medical care for consumers who may fall ill as a result of consuming unsafe food. However, given the potential cost of inspecting food at all critical points, Member Countries may choose instead to require compliance with good practices. These may include good agricultural practices, good manufacturing practices or good hygiene practices, based on the work of the Codex Alimentarius Commission.

### *Practical implementation of the food chain-based approach*

This approach can take the form of a general prohibition on placing food on the market that may be harmful to human health, specifying that this prohibition applies regardless of the stage in the production process at which the potential hazard is identified. It is then reflected in the obligations imposed on food business operators, such as requirements related to traceability or the obligation to inspect food at all stages of production, processing and distribution. The food chain-based approach is further embedded in the implementing texts of the legislation, which aim to regulate each sector involved in the process of placing food on the market. The guidelines developed by the Codex Alimentarius Commission are a prime example of this. These include the model export certificate for milk and milk products and guidelines on the use of flavourings and on substances used as processing aids.

The fourth principle of the Guidelines is that legislation should be science- and risk-based.

## 2. A SCIENCE- AND RISK-BASED APPROACH

**Principle 4.** “Food safety legislation should be informed by sound scientific evidence following the risk analysis approach.

The legislation should make provisions for collecting data, scientific information and evidence. In formulating legislation, there should be focus on a risk-based approach. Risk analysis should be applied consistently; open, transparent and documented; evaluated and reviewed as appropriate in the light of newly generated scientific data.”

### *Benefits of science-based legislation*

It should be noted at the outset that, in this context, each Member Country is free to determine the level of health protection it wishes to provide its population. However, whatever level of health protection is chosen, the Guidelines aim to support Member Countries in developing science-based legislation, meaning a legislation grounded in scientific knowledge and risk analysis. Legislation can only be considered science-based if a system is in place for collecting and evaluating scientific data. When applied to food safety, legislation based on risk analysis offers several advantages. First, it helps to ensure the robustness of food control systems. Since the risk must be scientifically identified, the risk management measures adopted will be appropriately designed to prevent or address that risk. This, in turn, strengthens consumer confidence in food products and in the institutions, producers and distributors responsible for them. Finally, it is also a prerequisite for ensuring that the measures implemented by a Member Country to ensure food safety within its territory comply with WTO requirements, particularly those set out in the SPS Agreement. The latter requires that any sanitary measure adopted by a Member Country be based on scientific principles and retained only if supported by sufficient scientific evidence.

### *How can science-based legislation strengthen the food control system?*

The food control system is strengthened when it is underpinned by scientific evidence. This backstopping stems from the objectivity introduced into the system and the resulting measures. It brings significant benefits in relation to:

- > the quality of food safety measures, which will be better tailored to the risks at hand and will minimize adverse effects on economic interests;
- > public and stakeholder support for such measures, as they are based on objective grounds and are therefore more readily justified;
- > compliance with international requirements under the SPS Agreement, thereby ensuring that food products, whether imported or exported, meet the national requirements of importing and exporting countries.

### *How, in practice, can legislation be based on science?*

The scientific basis for food safety lies in the scientific assessment of risks. The approach must, therefore, be risk-based rather than product-based. The disadvantage

of product-based legislation is that it lacks a preventive dimension. While it allows for product controls at various stages, it does not seek to impose practices aimed to reduce the occurrence of risks. It is also more costly, as it relies on product inspection and does not allow for early elimination of contamination that may have occurred at the start of the process. The risk analysis approach enables the implementation of preventive technical rules throughout the production chain, particularly at stages with a high risk of food contamination. Risk assessment, therefore, provides the foundation for adopting preventive or risk management measures. To identify these risks, Member Countries must establish a system for collecting and analyzing relevant data in the area of food safety. The legislation should designate the institution responsible for collecting such data, define its composition and set out its mandate.

### *The body responsible for providing scientific expertise*

Member Countries may consider designating, in their food safety legislation, the institution responsible for conducting scientific analysis and providing scientific and technical advice to the authorities responsible for adopting risk management measures. This approach ensures that the institution is governed by the necessary safeguards regarding its structure, mandate, composition, expert recruitment procedures and funding. Setting out the institution's operating procedures is also essential for ensuring transparency in scientific decision making, as well as the independence of both the experts and the decisions taken. This will help ensure that third party interests do not compromise food safety and that the measures adopted receive both public support and the necessary international credibility. Member Countries could stipulate that risk assessments must be carried out by trained, independent persons, namely scientific experts whose work is based on objective and transparent scientific data and who are not materially, financially, or otherwise linked to economic operators. Experts must have access to the necessary resources to carry out their tasks, and their areas of expertise should encompass a range of fields, including food additives, hygiene, contaminants, nutrition, genetically modified organisms, novel foods and food contact materials, among others. Member Countries could encourage dialogue between the body of experts, consumers or their representatives, independent researchers (such as academics), and representatives from the agrifood industry. The institution's operating procedures could include provisions for consulting or listening to these individuals or for involving them directly in certain internal bodies, such as working groups or committees.

### *The data collection and analysis system*

The body responsible for providing scientific expertise must also coordinate the collection of data to support risk analysis and carry out the analysis itself. Member Countries could provide for the collection of data to cover, in particular, food consumption and consumer exposure to risks associated with food consumption, as well as the incidence and prevalence of biological hazards, food contaminants and residues. For areas within its remit, the body of experts should be able to gather data, organize data collection through appropriate intermediaries, and analyse and summarize the relevant scientific and technical information.

### *Functional separation of risk assessment and risk management*

A key consideration is the separation between the body responsible for risk assessment and the body responsible for risk management – the authority that adopts a risk management measure. Risk assessment is carried out by scientific experts, while risk management consists of measures adopted by those holding legislative or executive authority. This distinction serves to protect scientific experts, who are not responsible for the adopted risk management measures and therefore cannot be held liable. Shielded from such responsibility, they are better able to perform their work independently. They are also not accountable for the appropriateness of the risk management measure, which strengthens their credibility. Conversely, the risk management authority may be held accountable for the measures it adopts. The risk management authority is not bound to follow the opinion of the risk assessment authority. It retains full discretion to decide on the most appropriate measures and may also take into account non-scientific considerations, such as social, economic or environmental factors. This separation ensures the functional independence of the risk assessment and risk management bodies.

The application of the precautionary principle can clarify the extent of discretion available to the risk management authority. In such cases, the risk is not confirmed, but the assessment may reveal indications suggesting the possible existence of a risk. The decision to implement a precautionary measure therefore falls more within the realm of political judgement than of scientific analysis, which highlights the importance of maintaining a clear separation between the risk management and risk assessment authorities.

### *Operating procedures of the risk assessment authority*

Certain operating procedures specific to the risk assessment authority, but not applicable to a risk management authority, should be established. For example, the risk assessment authority may be asked to provide an opinion at the request of certain stakeholders, who should be listed in full. The authority may also be empowered to initiate assessments on its own initiative, ensuring that its separation from the risk management authority is substantive rather than merely formal. It is also essential that experts publish declarations of conflicts of interest. With regard to its composition, the risk assessment authority should include a board or an equivalent body comprising individuals representing civil society and stakeholders from across the food chain. Members may be appointed jointly by members of the government, such as the minister of agriculture, and by representatives of the people, to support their independence. The role of this board is to ensure that the authority fulfils its mandate. An executive director, or equivalent, is responsible for implementing the decisions adopted by the board.



## C. PRINCIPLES RELATED TO FOOD SAFETY STAKEHOLDERS

The third principle concerns the roles and responsibilities of all stakeholders (1), while the fifth principle focuses specifically on cooperation and coordination among institutions (2).

### 1. CLEAR DEFINITION OF THE ROLES AND RESPONSIBILITIES OF PUBLIC AND PRIVATE STAKEHOLDERS

**Principle 3.** “The administrative provisions of food safety legislation should clearly define roles and responsibilities of the stakeholders including but not limited to the following: governments, FBOs, consumers, academia and research.”

The definition of roles and responsibilities concerns all stakeholders. The Guidelines provide a non-exhaustive list of the roles and responsibilities of these stakeholders.

- a. **“The FBOs at all stages of the food chain under their control shall ensure that foods satisfy the requirements of food legislation which are relevant to their activities and shall verify that such requirements are met.”**

#### *Preventive approach to risk*

The Guidelines recommend that Member Countries place responsibility for food safety on the person within the business who is responsible for ensuring compliance with regulations, namely the operator. As noted in the discussion on the [definition of a food business operator](#), this refers to the person who has the actual means to make decisions within the business. The operator’s role must encompass upstream and downstream stages of production, processing, or distribution, as well as all steps under their control. The operator is responsible for ensuring that food is safe and fit for consumption at every stage of the production chain under their control.

To this end, the operator may be obliged to establish requirements based on the Hazard Analysis and Critical Control Point (HACCP) system. They may also set procedures to monitor compliance with those requirements. Member Countries should also establish practical rules in their implementing legislation to ensure food hygiene, possibly taking into account the nature of the products concerned.

Member Countries may also decide to subject the operator to registration or prior authorization requirements, either for their products or their business, and may impose obligatory insurance to cover any damages should a food product placed on the market prove unfit for consumption.

### *Preventive approach to risk: the HACCP-based approach*

The HACCP system is a preventive approach to risk. It is based on the idea that it is better to eliminate situations likely to give rise to food safety risks than to carry out sampling or testing of all food at every stage of the production process to verify its safety. Its aim, therefore, is to identify hazards and assess risks at each stage of the production process, and to implement a production control system at critical points. This approach may be based on a hazard and risk analysis specific to the food business in question. However, it requires internal controls, which can prove particularly costly. Food business operators would, therefore, benefit from adhering to good practices in agriculture, hygiene, processing and the transportation and distribution of food. To this end, operators can effectively make use of the codes of practice developed by the Codex Alimentarius Commission. These include, in particular:

- > the *General Principles of Food Hygiene*, updated in 2022 (CXC 1-1969) (FAO and WHO, 2023);
- > the *Code of Practice for the Storage and Transport of Edible Fats and Oils in Bulk*, updated in 2024 (CXC 36-1987) (FAO and WHO, 2024c); and
- > the *Code of Practice on Good Animal Feeding*, updated in 2024 (CXC 542004) (FAO and WHO, 2024d).

### *Risk management: implementation of traceability*

Traceability is a mechanism that applies at every stage of food production, from the point at which the food is produced to the point at which it is put on the market. Whether it takes the form of animal identification from birth or labelling the food at the time it is put on the market, traceability reflects an integrated and comprehensive approach to food safety. It can be regarded as a pillar of consumer safety. Traceability (or product tracing) may be defined as “the ability to follow the movement of a food through specified stage(s) of production, processing, and distribution” (FAO and WHO, 2024a). Member Countries would benefit from explicitly requiring food business operators to establish a system for identifying food or substances intended for incorporation into food that they manufacture, produce, process or distribute. This mechanism enables both preventive (ex ante) and corrective (ex post) interventions in response to an emerging risk. On the one hand, traceability allows an operator who identifies non-compliance during production to trace the

food in question, even if it has already reached the distribution stage. This makes it possible to recall a food regardless of the stage of production or distribution it has reached. Traceability, therefore, enables the removal of any food that is unfit for consumption from the production or distribution chain. On the other hand, tracing back through the food chain to identify the source of contamination enables corrective action through changes in practices or controls and helps identify the responsible party, who may be required to compensate individuals and businesses that have suffered harm. The product tracking system may take the form of batch identification, which must be clearly indicated on the product label and be accessible to the consumer. Food business operators may be required to identify the person who supplied them with a product or a substance incorporated into a product they have produced, manufactured, processed or distributed, as well as the persons to whom they have supplied the product in question.

### *Risk management: withdrawal from the market or recall of food products or product batches*

One of the consequences of traceability is the obligation for food business operators to implement a risk management mechanism, such as the withdrawal or recall of a food product or one or more batches. Withdrawal applies when the product is still available on the market, while recall is required when the product is no longer on the market because it has already reached the consumer. The obligation to withdraw a product that is unfit for consumption should be triggered as soon as an operator suspects that a product they have produced, manufactured or distributed does not comply with the provisions of food safety legislation. In such a case, the operator should be required to inform public authorities of the decision to withdraw the product or batch from the market. Where the risk management decision consists of a product recall that directly affects consumers, Member Countries should require the operator to provide consumers with clear and accurate information about the reasons for the recall. This information would help mitigate the negative impact of the recall decision on consumer confidence in the food control system. Member Countries should also make this tool available to the competent public authorities.

### *Consumer information*

Among the requirements that Member Countries may impose on food business operators, the prohibition on misleading consumers constitutes a key tool for protecting consumer interests, particularly their economic interests. For example, it would be prohibited to display the image of an ingredient on the product packaging if the product does not contain it. Along these lines, Member Countries could set out detailed rules on the labelling, presentation and advertising of the product. The aim is to enable consumers to make informed choices about food products and to prevent unfair commercial practices likely to mislead them. These rules could be set out in implementing legislation, which offers the advantage of facilitating both implementation and, if necessary, future revision. Member Countries may draw on the *Handbook on Food Labelling to Protect Consumers*, published by the Food and Agriculture Organization of the United Nations (FAO, 2016), or the

*General Standard for the Labelling of Pre-packaged Foods* (CXS 1-1985) (FAO and WHO, 2024b). Mandatory information includes the identity of the food, the list of ingredients and their proportion in the final product, food additives, allergens present and the product's date marking. As part of the date marking, information on shelf life and specific storage conditions will support consumer education. Additional elements may be required from operators, such as the origin of the product or of certain ingredients, at the discretion of Member Countries.

**b. “The government has the role and responsibility to establish and maintain up-to-date legal requirements and verify that food business operators comply with food safety legislation.”**

#### *Authorities' essential organization*

Regardless of the stage involved, be it production, processing or distribution, Member Countries are responsible for ensuring compliance with the requirements laid down in food safety legislation. Thus, although operators may be required to carry out self-checks as part of a HACCP approach, this does not affect the overarching obligation of Member Countries to ensure compliance with applicable legislation within their territory. The principle of a Member Country's general obligation to monitor food business operators should be set out in its food safety legislation, while detailed arrangements for implementation may be provided in implementing regulations. This gives each Member Country the flexibility to determine the control mechanisms best suited to its internal structure. For example, Member Countries may assign responsibility for monitoring food business activities to the ministry responsible for agriculture in the case of unprocessed food, to the ministry responsible for food in the case of processed food, or to the ministry responsible for fisheries in the case of food of aquatic origin. Alternatively, they may decide to entrust all these responsibilities to a single ministry. Responsibilities may also be delegated to decentralized bodies, such as municipalities. In such cases, coordination between institutions is essential to ensure adequate food safety, with central oversight at the national level required to verify the work of local authorities. Regardless of the approach adopted, where multiple authorities are involved in ensuring compliance with legislation, close coordination among them remains essential. In addition, to support monitoring activities, authorities should establish technical standards based on codes of practice that food business operators must follow. They should also carry out direct control activities through inspectors from the relevant national services or decentralized bodies. The powers and means available to inspectors to carry out their tasks should be specified.

#### *Sanctioning non-compliance through enforcement*

Member Countries may adopt either a cooperative or an enforcement-based approach. A cooperative approach involves assigning inspectors the task of verifying whether operators are correctly applying the self-checks previously identified. This framework reflects the adoption of a cooperative approach, aimed not at punishing behaviour but at achieving compliance with legislation through education and guidance. By contrast,



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if Member Countries choose to adopt a purely enforcement-based approach, they may specify in the law the sanctions that can be imposed on operators who fail to meet their obligations. In such cases, Member Countries should clearly identify the authorities empowered to carry out inspections, record non-compliance and impose sanctions, as well as the types of sanctions applicable. Sanctions may be administrative (with a public health focus) or criminal. Administrative sanctions imposed by an administrative authority may include warnings, temporary suspension or permanent withdrawal of a licence, seizure and confiscation of products, product recalls and financial penalties. These may be applied alongside criminal sanctions or used as alternatives in Member Countries where access to the judiciary is more difficult; for instance, where court systems are overburdened. Criminal sanctions may include fines or custodial sentences, along with supplementary penalties such as the publication or dissemination of the court decision, seizure and confiscation of products, or product recalls. Where this is standard practice, Member Countries may also refer to the provisions set out in their criminal code or code of criminal procedure in cases of non-compliance with legal requirements.

### *Mechanisms for compensating individuals who have suffered harm*

It is essential to distinguish between Member Countries whose legal systems are based on the civil law tradition and those following common law.

In Member Countries with civil law systems (also referred to as Romano-Germanic systems), compensation for individuals who have suffered harm may fall under contractual liability, non-contractual (tort) liability or a specific form of liability based on product defect.

### *Contractual liability in civil law and common law systems*

Contractual liability applies only where a contract binds the parties. This prevents consumers from holding the producer or manufacturer liable when intermediaries are involved, as is often the case with processed food products. Contractual liability may be effective in cases where one of the parties to the contract has failed to fulfil its obligations. It also allows one of the parties to the contract to invoke the concept of a latent defect in the item delivered: even if both parties appear to have fulfilled their obligations, the seller has in fact delivered a product that cannot be used as intended. In this case, although a food product has been delivered, it is unfit for its intended use (consumption), and the buyer should, therefore, be entitled to compensation for the harm suffered. This framework benefits processors of raw materials, as defects in the product are likely to be identified quickly. It is important to note that compliance with food-production standards or the prior obtaining of a marketing authorization does not guarantee that the food will be free from defects. The burden of proof lies with the buyer, who must demonstrate that the product could not be used as intended. However, the buyer is not required to prove that the producer has breached a contractual obligation. This mechanism may enable compensation in cases where products of animal origin contain residues of veterinary medicines exceeding the maximum residue limit set by the authorities or where food is found to be spoiled.

### *Non-contractual liability (tort) in Member Countries with civil law systems*

Non-contractual liability, particularly liability for the actions of others, can address the limitations of contractual liability to the benefit of the consumer. It enables a consumer to hold an intermediary liable for harm caused by the producer, for example, in cases where the seller cannot be traced. The most favourable system for consumers would be the establishment of a specific liability mechanism based not on fault but on the defectiveness of the product. Such a liability regime can be triggered regardless of whether a contractual relationship exists between the producer and the victim. As this mechanism is not specific to food products, it may already be established in other legislation. In such cases, a cross-reference could be included. If not already established, the provisions governing this liability framework could be set out in food safety legislation. It may be stipulated that, where the producer cannot be identified, the seller or any other supplier may be held liable, provided that the product has been put into circulation. The concept of putting food products into circulation would need to be clearly defined to determine whether a product that is not yet accessible to consumers may nonetheless be considered to have been placed on the market. The claimant must prove the existence of harm, the defect in the product, and the causal link between the defect and the harm. The producer may be exempt from liability under certain conditions, such as where the harm results from a third party's actions or from development risk. If Member Countries choose to establish such a liability mechanism, they must also specify the limitation period as part of the implementation provisions.

### *Tort liability under common law*

Tort liability under common law arises when the consumption of a food product causes harm to the consumer. In the United States of America, tort liability serves two purposes: it provides compensation and redress for harm suffered by an individual, and it acts as a deterrent for food business operators when court rulings result in significant financial penalties. This deterrent effect may also influence the market, potentially leading to higher food prices. With only a few exceptions, a manufacturer, producer, processor or distributor is held liable for harm caused to a consumer if there was a lack of care in the preparation or control of the product. *Product liability law* has become a specialized field within tort law. One of its distinguishing features is the concept of *strict liability*, under which the claimant must demonstrate only that the product was defective and that it caused harm. It is not necessary to prove that the manufacturer was at fault or breached duty of care. The main drawback of liability systems is that the victim must bring legal proceedings, which may involve significant costs that could exceed the compensation to which they are entitled. Another difficulty lies in proving the source of contamination. To address this limitation, Member Countries could enact legislation allowing for class actions, which facilitate legal proceedings when a large number of victims are affected by foodborne illness. In this context, Member Countries may decide to authorize consumer associations to bring a collective action to court on behalf of the victims. They could also allow contingency fee arrangements, whereby lawyers cover the upfront costs of litigation and are remunerated through a share of the sums awarded in a favourable judgement (*contingency fee legal practice*).

### *Limitations of a civil liability-based system*

Any system based on civil liability, whether following the civil law or common law tradition, requires a well-functioning civil justice system. This includes judicial independence from the executive, impartiality of judges, adequately resourced courts, and the capacity of public institutions to enforce judgements. A significant risk is that the party found liable may lack the means to compensate the victim. To mitigate this risk, Member Countries could require food business operators to take out insurance. They could also establish a compensation fund for victims of harm caused by the consumption of food. This fund could be financed through levies paid by food businesses and/or through public funds. It would allow any victim to receive compensation for the harm suffered, including where the producer or suppliers cannot be identified or are insolvent. In all cases, the conditions for implementing such a scheme should be set out in the legislation.

### **c. “Consumers have a role and responsibility in managing food safety risks including products under their control and where appropriate they should be provided with information on how to achieve this.”**

The Guidelines encourage Member Countries to recognize that certain risks can be mitigated by providing adequate information to consumers. This is the final link in the integrated approach to food safety. Ensuring the safety of food throughout the



production and distribution chain would be futile if risks materialize due to improper storage or preparation by consumers. The Guidelines do not assign responsibility to consumers. Instead, they aim to support them in managing risks. Such risks are unlikely to give rise to liability on the part of the food business operator who supplied the product. The objective, therefore, is to encourage Member Countries to adopt a preventive approach to risk, even when the risk arises at the consumer level. Several stakeholders can be called upon to provide consumers with the information they need; these include:

- > Food business operators: Food business operators may provide consumers with information and advice regarding food preparation, storage conditions and shelf life. Such information can be provided on food labels and on any related promotional materials (see [Consumer information](#) in the previous section). It is then the consumers' responsibility to follow this guidance.
- > Government services: Member Countries may develop a public food policy aimed at educating the public to improve food safety. This policy may take the form of an awareness-raising campaign. For example, Member Countries could distribute booklets on fish consumption, including recipes, nutritional information, and basic guidance on storage, preparation and cooking.

**d. “Academic and research institutions have a role in contributing to food safety legislation, as they are a source of expertise to support the risk-based and scientific foundation of such a system.”**

The Guidelines recommend involving research and higher-education institutions in the development of food safety legislation, given their technical and scientific expertise. Such involvement may take the form of consultations or hearings, as mentioned in the section [Stakeholder consultation](#). However, Member Countries should ensure that, when making a specific request for assistance, these institutions can carry out their mission, notably by providing the necessary resources. Regardless of how research and higher-education institutions are involved, Member Countries should ensure that the outcomes of their participation are made publicly available to foster support for the forthcoming legislation.

## 2. INSTITUTIONAL COOPERATION AND COORDINATION

**Principle 5.** “Food safety legislation should provide for a mechanism for transparent and effective communication and coordination among the different institutions and organizations responsible for food safety along the food chain. Further, food safety legislation should have provisions to support food safety education, communication, and training.”

As set out in the second objective (Part 3b), the Guidelines aim to provide Member Countries with guidance on establishing coordinated national food control systems.

### *From cooperation to coordination*

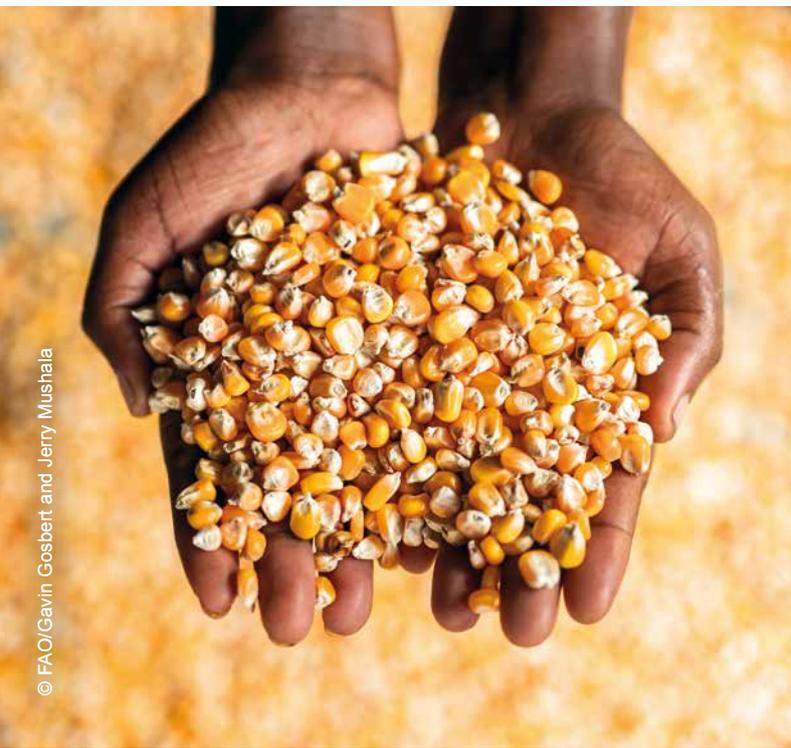
The Guidelines recommend both cooperation and coordination, distinguishing these from collaboration.

Cooperation occurs when Member Countries and other stakeholders work separately on different aspects of an issue and share their work so that each party can fulfil its role in achieving a common result. In a cooperation framework, each party pursues its own objectives.

In contrast, collaboration involves joint work to achieve a shared goal. Collaboration is, therefore, more inclusive of stakeholders than cooperation. Coordination lies between the two. It involves striking a balance between collaboration and cooperation while ensuring that the various elements of the co-created knowledge are organized among stakeholders.

### *Why is it necessary to organize cooperation and coordination within the food control system?*

The agrifood sector encompasses a diverse range of stakeholders and challenges, spanning economic, health and environmental aspects. This diversity creates a risk of fragmented responsibilities among different public authorities operating in the sector. Cooperation and coordination within the system are therefore critical.



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Indeed, a lack of cooperation, or even collaboration, may result in overlapping or contradictory administrative decisions, creating legal uncertainty for those subject to the measures. Insufficient information sharing between different services may also compromise food safety. For this reason, the food control system must at least be founded on cooperation. This applies regardless of the stage of food production (from agricultural production to market placement), the type of food (raw or processed), its nature (based on animals, plants, bacteria or fungi, and potentially on protists in the future), or its origin (domestic or imported).

*How should the food control system be coordinated?*

Several organizational models are possible. Whichever model is chosen, it must be set out in regulatory texts.

At a minimum, and regardless of the chosen governance model for the food control system, its coordination and effectiveness will be enhanced if the law explicitly identifies the competent authority responsible for:

- > coordinating food control activities, which is crucial when several institutions are involved in the system;
- > developing procedures and measures for prevention, precaution, risk management and communication, including in emergencies;
- > conducting food safety controls, inspections and monitoring;
- > setting general guidelines for the food control system, adopting regulatory instruments, proposing legislative reforms and soft law standards;
- > acting as the point of contact for foreign public authorities at both regional and international levels.

## D. PRINCIPLES RELATED TO THE DEVELOPMENT OF LEGISLATION

In developing legislation, Member Countries should consider their political context and existing legal framework (1). Member Countries may then draw on Codex Alimentarius standards and WTO principles to align their legislation more closely with that of other CCAFRICA Member Countries (2). In doing so, and through the principle of equivalence of legislation, Member Countries can facilitate trade among themselves (3).

### 1. THE POLICY FRAMEWORK

**Principle 7.** “Food safety legislation should be part of a robust national policy framework, and mechanisms for its regular review and updates should be provided for.”

#### *A robust national policy framework*

The effectiveness of a national food control system depends on the strength of its legal foundation. This legal framework must be developed in accordance with the selected policy approach and its intended objectives. In other words, the policy framework serves as the strategic foundation for the legal framework. The relationship between the two may vary depending on the prevailing political and legal systems. A policy framework is considered robust when it is developed by competent institutions in accordance with the principles of impartiality and integrity, and in consultation with all relevant stakeholders, such as research and academia, food sector stakeholders, and consumers, to ensure that all pertinent views are taken into account. The policy framework should clearly define the mandates of the institutions responsible for food safety and reaffirm the obligation of Member Countries to provide these institutions with the necessary resources to discharge their responsibilities effectively. The framework will be stronger if it is comprehensive in scope. To this end, it should outline clear strategic guidance to support the adoption of legislation, namely general and abstract texts that define overarching principles, which are then complemented by concrete and technical implementing texts. The policy framework is, therefore, distinct from the legal framework in that it sets out the strategic guidance that the latter is intended to follow.

#### *A living body of legislation*

While the law provides a framework for agrifood activities in order to ensure consumer food safety, it should not impede the development of new practices that are safer or more economical, provided that food safety is not compromised. The law is a living instrument and must strike a balance between regulating current practices and adapting to new developments. For this reason, legislation must be capable of evolving in step with technical and scientific progress, without jeopardizing consumer safety. It must, therefore, be subject to periodic updates. It should also be open to revision when court decisions reveal shortcomings or a lack of clarity.

To facilitate the revision and updating of legislation, Member Countries should enshrine general and abstract principles in the law, while specifying the technical rules for implementing these principles in regulatory texts. The procedure for adopting a regulatory text is more flexible, allowing public authorities to act more swiftly by amending or updating unsuitable requirements. This also helps preserve the integrity of the general principles, ensuring consistency and stability across the legal framework. A draft law must include an explanatory memorandum, which sets out the historical, international, economic, social and legal context in which the draft is being introduced, the main objectives pursued, and a detailed article-by-article explanation of the proposed provisions. The law itself must have a clear, precise and concise title that reflects its purpose. If the law amends a previous law, the title must indicate this by referencing the law being amended. A regulatory text must, in its preamble, cite the legal provisions on which it is based. Each article of the law must specify, where appropriate, that its implementing measures will be adopted through regulations. The territorial scope of the law must be defined, along with its effective date. Any provisions in previous legislation that are inconsistent with the new law must be expressly repealed.

## 2. HARMONIZATION

**Principle 8.** “When designing food safety legislation, CCAFRICA Member Countries should aim for the harmonized approach to facilitate intra-African and international trade and protect consumer health.

When drafting/updating national food safety legislation, CCAFRICA Member Countries should consider relevant Codex Alimentarius texts as well as World Trade Organization principles, as appropriate.

In the absence of specific national food safety regulations, Codex Alimentarius texts may be considered.”

The Guidelines aim to promote a harmonized approach to food safety throughout the food chain, while also facilitating intra-African and international trade.

### *How should harmonization of legislation be understood?*

To clearly define the scope of the term harmonization, it is necessary to distinguish it from another key concept: unification. Understanding the distinction between these two concepts is crucial, as any confusion could have significant legal implications. The two concepts differ primarily in the degree of integration they achieve rather than in their nature. Harmonization is a technique for aligning national legislation around shared guiding principles. The only requirement is that Member Countries’ legislation respect the guiding principles sufficiently to be considered compatible. By contrast, unification leaves no scope for discretion and requires Member Countries to adopt precisely the same rules. The Guidelines, therefore, seek to bring national legislation into closer alignment to facilitate trade in food products between Member Countries.



As a result, the harmonization objective allows each country a degree of discretion and interpretation in the provisions it adopts. Harmonization provides a sound basis for trading partners to conclude agreements recognizing the equivalence of their respective legislation. Harmonization is not intended to establish a single legal order among the different Member Countries simply because they implement the Guidelines (Delmas-Marty and Izorche, 2001, p.73).

### *How is harmonization implemented in practice?*

The Guidelines provide guidance to CCAFRICA Member Countries for developing or revising their food safety legislation. They are not intended to impose specific food safety rules, but rather to propose principles that Member Countries may choose to follow or not. Where Member Countries opt to align with these principles, they retain full discretion in implementing them. While this flexibility has advantages, it may also hinder progress towards a harmonized approach among CCAFRICA Member Countries. This is why the Guidelines refer to the guidance developed by the Codex Alimentarius Commission for the practical implementation of technical standards covering the entire food production chain. The WTO agreements also offer additional guidance and interpretive support to Member Countries. Ensuring that the legislation of the CCAFRICA Member Countries aligns with international standards is a key objective of the Guidelines, as this facilitates international food trade. In addition to the agreements themselves, Member Countries may consult the case law of the Dispute Settlement Body and refine their legislative drafting in line with interpretations of the relevant provisions of the WTO agreements.



Finally, reference to international standards developed by the WTO and by the Codex Alimentarius Commission would suffice if food safety were limited solely to the wholesomeness of food products. However, the approach taken to the food chain is both holistic and integrated. Consequently, guidelines developed by other international intergovernmental organizations may also provide useful support to CCAFRICA Member Countries. An example is the World Organisation for Animal Health (WOAH), which has drawn up the Terrestrial Animal Health Code and the Aquatic Animal Health Code. Among other things, these codes describe the role of veterinary services in food safety management systems. They also offer recommendations for monitoring the quantities of antimicrobial agents used in animals raised for food production.

### 3. EQUIVALENCE

**Principle 6.** “The principle of equivalence should be provided for in the food safety legislation of CCAFRICA Member Countries. Mutual recognition, where applicable, should be applied to facilitate trade.”

#### *Scope of the concept*

Equivalence is understood here as “the capability of different inspection and certification systems to meet the same objectives” (FAO and WHO, 2022). Article 4 of the SPS Agreement (1994) stipulates that WTO importing Member Countries must recognize the sanitary measures of exporting Member Countries as equivalent, provided they ensure the same level of health protection, even if the measures differ. However, the exporting country must objectively demonstrate this equivalence, and the importing country may require inspections, testing or any other relevant procedures for this purpose.

#### *Distinction between equivalence and related concepts*

The SPS Agreement encourages Member Countries to enter into bilateral or multilateral agreements on the recognition of the equivalence of specified sanitary measures. Member Countries should distinguish between equivalence and sameness. While in the case of sameness, the measures are the same for both the importer and the exporter, this is not the case for equivalent measures. Thus, equivalent measures may differ from those applied by the importing country but must serve “to meet the same objectives”, namely, to ensure the expected level of consumer health protection. Harmonization occupies a middle ground between equivalence and sameness. It is a technique used to align national legislation around common guiding principles. Adopting Codex Alimentarius texts, including standards, guidelines and codes of practice, can help Member Countries harmonize their legislation and technical regulations. Equivalence plays a major role in developing the agrifood economy in Member Countries. It not only ensures the safety of trade (from the perspective of the SPS Agreement) and facilitates it, but also reduces the costs for the exporting state of bringing its regulations into compliance.

#### *Implementing equivalence*

Equivalence can be applied to a single sanitary measure or to a set of sanitary measures, as well as to the inspection and certification systems used in trade. The various steps involved in determining equivalence are outlined in two Codex texts, which should be consulted: the *Guidelines for the Development of Equivalence Agreements Regarding Food Import and Export Inspection and Certification Systems* (CXG 34-1999) (FAO and WHO, 1999) and the *Guidelines on the Judgement of Equivalence of Sanitary Measures associated with Food Inspection and Certification Systems* (CXG 53-2003) (FAO and WHO, 2008). Both texts are currently under revision. It is important to note that entering into an equivalence agreement is advisable only when there is frequent and significant trade between two countries, not only because such agreements do not always ensure reciprocity, but also because they are costly to negotiate.



# NOTE ON SECTION 6

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The recommendations in Section 6 of the Guidelines are broad in scope and intended to guide the formal drafting of legislation. They do not require further elaboration here.

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# EXPLANATORY NOTE ON THE GUIDELINES FOR DEVELOPING HARMONIZED FOOD SAFETY LEGISLATION FOR THE CCAFRICA REGION (CXG 98-2022)

This explanatory note offers practical guidance on the drafting, interpretation and reform of legal instruments governing food, taking as reference the standards and related texts of the Codex Alimentarius Commission, and in particular the “Guidelines for Developing Harmonized Food Safety Legislation for the CCAFRICA Region” (CXG 98-2022) prepared by the FAO/WHO Coordinating Committee for Africa. It lays out considerations that should guide lawmakers and regulators when integrating the Codex Alimentarius principles into national legislation; it encourages a science- and risk-based approach, supports integrated food chain regulation, and fosters stakeholder consultation. By strengthening national food control systems and promoting legislative coherence, the explanatory note contributes to a safer food supply and improved public health outcomes.

Developed as a resource to support the application of the “Guidelines for Developing Harmonized Food Safety Legislation for the CCAFRICA Region” (CXG 98-2022), the explanatory note reviews key legal concepts and definitions, including food safety, risk analysis, and the roles of food business operators and authorities. It provides practical considerations for the adoption of principles into effective legislation, such as transparency, traceability, and the precautionary principle, highlighting concrete ways forward for aligning national legal frameworks with international standards. The explanatory note also addresses the distinction between food law and food safety legislation, offering flexibility for Member Nations to tailor their normative instruments while maintaining compatibility with global trade requirements.

In addition to legislative guidance, the explanatory note promotes inclusive stakeholder engagement – spanning consumers, academia, and industry – and recommends robust regulatory frameworks with mechanisms for regular review. It encourages Member Nations to adopt reflexive, evidence-based food regulation that evolves with scientific progress and national contexts. By fostering harmonization, equivalence, and alignment with international standards, the explanatory note supports institutional coordination, reduces trade barriers, and enhances legal certainty – ultimately contributing to stronger trade across the African region.

AGRIFOOD SYSTEMS AND FOOD SAFETY DIVISION – ECONOMIC AND SOCIAL DEVELOPMENT

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ROME, ITALY

ISBN 978-92-5-140300-6 ISSN 2415-1173



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CD7608EN/1/11.25