

## The EU Food Police. Its Lessons for Taiwan

Der-Chin Horng

**Abstract** Food police emerged as a key role for legal implementation following a series of food scandals in Europe and Taiwan which began in the 1990s. Proper institutional control has been recognized as an essential element in protecting consumers with respect to food, and so, following the adoption of Regulation 178/2002, the EU acted to establish an effective food control system converting all the food chain from farm to table. The EU applied a separation principle for risk assessment and risk management in food safety. In line with the European Commission responsible for risk management, the food police in the EU and its Member States play a critical function in auditing food products and cracking down illegal activities. The EU food police would enhance the EU's food safety governance and promote the implementation of EU food law. This food police system thus facilitates the Europeanisation of food inspection at the European level and provides a multilevel institutional protection for food safety and consumer interest in the EU. This paper examines EU food control jurisprudence and the associated implement framework on food police, and compares these with corresponding institutions and practices in Taiwan. It also offers some proposals for food police reform in Taiwan to enhance the food law implementation in general.

**Keywords** EU - Food safety - Food control - Food police - Consumer interest  
The Act Governing Food - Safety and Sanitation

**JEL Classification** K39

### Introduction

#### *Background and Importance of Food Safety in the EU*

Since the 1990s, European countries, the U.S. and Taiwan have been plagued by major food safety crises and scandals, such as mad cow disease (BSE), foot-and-mouth disease (Aphtae epizooticae), dioxin poisoning, plasticiser additives, and tainted oil, etc. These scandals have put public health and consumers' interests at serious risk. The reoccurrence of food fraud and poisoning leads to what sociologist Ulrich Beck terms a postmodern and post-industrial "risk society" (Beck 1992). One of the prominent sources of risk in a postmodern and post-industrial society is a very basic, but now distant need—food (WHO 2015). The formation of the EU food safety system came in direct response to such food crises. This system is intended to establish high-standards of food safety for EU citizens, to ensure the free flow of food products and the proper functioning of the internal market, and to restore consumer confidence

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in European food (Vos, 2000). Regulation 178/2002,<sup>1</sup> passed by the EU on 1 February 2002 and put into force on 21 February, is the basic EU legal framework for food safety. It establishes the general principles, responsibilities, and basic requirements concerning risk-safety institutions, traceability, food businesses, emergency measures, and risk management. More importantly, Chapter III of the Regulation establishes the official risk safety institution—European Food Safety Authority (EFSA). Additionally, under Regulation 882/2004<sup>2</sup> passed on 29 April 2004, Article 32 and Article 33 respectively establish the EU food Reference Laboratory (EU-RL) and national reference laboratories which are responsible for the analysis and control of food safety. To facilitate inspection and compliance with food safety law, Europol and numerous Member States have also set up food police divisions. The establishment of all these institutions are responsible for effectively implementing food controls and regulations. Institutional change, legal reform and policy transformation are thus important factors ensuring the soundness of food safety in the EU.

In Taiwan, the plasticiser additive scandal of 2011 and the tainted oil scandal of 2014 dramatically undermined the credibility of food businesses, weakened consumer confidence, and stained Taiwan's reputation as a kingdom of delicacies. The social cost and medical expenses that might accrue cope with public health problems are considerable. The reoccurrence of food safety breaches shows that Taiwan has much room for improvement compared to the EU with respect to food control regulations, food safety institutions, law implementation and food crisis management, etc. In Taiwan, the Act Governing Food Safety and Sanitation was put into force 28 January 1975. Between 10 June 2011 and 20 January 2015, the Act went under six amendments incorporating such measures as emergency alerts, labelling, traceability, self-governance, market monitoring, imported food origin certification, and border inspections, etc. The most recent three amendments focused on increasing administrative penalties, but failed to touch upon establishing risk analysis and management institutions that are key ingredients in a food safety system. Also contributing to delays in addressing the food safety crises was a lack of coordination and separation of duties among the various responsible government agencies, including the Ministry of Health and Welfare, Council of Agriculture, Environmental Protection Administration, and the Ministry of Economic Affairs.

Although the Act has undergone frequent amendments, food safety breaches and scandals have not abated, indicating that the food safety law is not being executed properly. Therefore, in attempting to improve current regulations, the government must establish an integrated system governing risk analysis, laboratories, and auditing to enable proper execution of food safety laws. An integrated and robust domestic system is also crucial in bridging international food safety standards which would, in return, foster exports of domestic food products.

EU food safety law is an excellent reference point for the Taiwanese government in strengthening the food safety system. In the three amendments during 2013 and 2014, the government made reference to the concept of "from farm to table" in the EU law. However, other institutions and mechanisms, such as a risk management system based on risk assessment and analysis, national laboratories, and food safety police, should also be incorporated to facilitate substantial execution of food controls and restore the government's credibility in food management.

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<sup>1</sup> Regulation 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, OJ 2002, L31/1, as amended by Regulation 1642/2003, OJ 2003, L 245/4.

<sup>2</sup> Regulation 882/2004 of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, OJ 2004, L165/1.

This paper adopts the methodologies of legal and policy analysis, and a comparative perspective to investigate official documents, specific articles and case studies of food safety related legal reform and enforcement construction in the EU and Taiwan. In hope to shed light on food safety reform and innovation in Taiwan, this paper attempts to analyse the objectivity, justifiability and suitability of food safety policies in the EU, and implements a critical approach to comment on food safety law and practices in Taiwan. This paper focuses on food police in the EU and its implications and inspiration for policies and practices in Taiwan.

### ***Jurisprudence for Food Police Formation***

According to the United Nations Food and Agriculture Organisation (UNFAO), the components of food control and food safety system are (FAO, 2004):

1. Food safety regulations and standards;
2. Risk assessment and risk management institutions;
3. Laboratories;
4. Official enforcement unit including food police;
5. Risk communication;
6. Coordination mechanism of food safety related institutions;
7. Food safety crisis management and alert system in case of emergency; and
8. Education, training and international cooperation.

Law and regulation are infrastructure crucial to the implementation of food safety. Regulations are even considered elements of industrial competence and national competitiveness to the extent that sovereign states enter regulatory competition (Trachtman, 1993).

Food control is a series of compulsory actions implemented by the government to enhance food safety standards in each and every stage of the food supply chain, including production, processing, transportation, storage and sales recall, among other things. It would have positive spill over effects on areas such as consumer interest, public health, the development of the food industry and fair competition. Designing regulations, policies and implementation on the national level is indispensable to integrating diverse resources. Built on such a framework, a system composed of risk assessment and management mechanisms, food safety standards and processes, food safety laboratories and food police would emerge to meet the basic food safety needs of the general public (FAO, 2003).

Food safety has its origin in government control theory, particularly the theory of public interest (Peltzman, 1980). Accordingly, food control is necessary because it protects consumer interest, public health, fair competition and the proper functioning of the market, and deters businesses from engaging in illegal activities. In addition, food controls also effectively prevent food businesses from engaging in unfair competition practices that would trigger a race to the bottom scenario and worsen public health. In case of malfunctioning food controls, businesses would compete by lowering safety standards, and engage in rent-seeking and arbitrage activities, with the ultimate result that the entire food safety system would be disordered (Siles-Brügge, 2014).

Information asymmetry also poses problems in building a food control system. Pesticides, additives and other chemicals are common in the production and processing of food products, but detailed information is often not easily available to consumers. In this case, the role of government is essential to ensuring the quality and safety of food products by, for example, restricting the use of pesticides and additives and requiring businesses to reveal pertinent information on product labels (Greenwald, Stiglitz and Weiss, 1984).

Article 14 of the EU Basic Food Safety Law of Regulation 178/2002 stipulates that food shall not be placed on the market if it is unsafe. The definition of unsafe food include injurious to health and unfit for human consumption. In determining whether any food is unsafe, regard shall be had:

1. to the normal conditions of use of the food by the consumer and at each stage of production, processing and distribution; and
2. to the information provided to the consumer.

Furthermore, in determining whether any food is injurious to health, regard shall be had:

1. to the probable immediate, short term and long term effects of food on the health of a person and on subsequent generations;
2. to the probable cumulative toxic effects; and
3. to the particular health sensitivities of a specific category of consumers where the food is intended for that category of consumers.

In determining whether any food is unfit for human consumption, regard shall be had to whether the food is unacceptable for human consumption according to its intended use, manner of contamination, whether by extraneous matter or otherwise, or putrefaction, deterioration or decay. Consumer interests, public health, and general trust in the food markets and the government's authority would be endangered if food businesses, especially large-scale firms, take advantage of the freedom to operate and engage in illegal activities such as food fraud and food crime (Popper, 1945). In Taiwan, repeated major food crises have put at risk the health of consumers and damaged the integrity of Taiwan's food markets and food culture. The companies involved in adulterating food products and other food-related crimes should be regarded as inimical to an open society and the general public. Protecting consumers' interests is thus the core objective of food controls, according to UNFAO and WHO (FAO, 2004). The major task of food law in the EU, according to Article 1 of Regulation 178/2002, is to provide assurances of a high level of protection of human health and consumers' interests, and ensuring the effective functioning of the internal market.<sup>3</sup>

In the EU, the protection of consumers' interest enjoys constitutional status. Article 169 of the Treaty on the Functioning of the European Union (TFEU)<sup>4</sup> provides that "In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests". Article 12 of TFEU<sup>5</sup> also stipulates that "consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities". Article 38 of Charter of Fundamental Rights of the European Union<sup>6</sup> provides that consumer protection should be among the highest guiding principles of EU policies. According to Article 6 of the Treaty on European Union (TEU)<sup>7</sup>, Charter of Fundamental Rights of the European Union shall have the same legal value as the TEU and TFEU. Consumer protection not only serves as an interest, but also constitutes a basic constitutional right. Therefore, the EU shall carry out

<sup>3</sup> Article 1 (1) Regulation 178/2002, provides that: The Regulation provides the basis for the assurance of a high level of protection of human health and consumers' interest in relation to food, taking into account in particular the diversity in the supply of food including traditional products, whilst ensuring the effective functioning of the internal market.

<sup>4</sup> OJ 2010, C83/47

<sup>5</sup> Article 12 TFEU, provides that: Consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities.

<sup>6</sup> OJ 2010, C83/389

<sup>7</sup> OJ 2010, C83/13

policies to protect consumers' interests; failure to do so might violate constitutional treaties (Benöhr, 2013).

The Court of Justice of the European Union (EUCJ) in 1979 *Cassis de Dijon* confirmed that consumer protection is a compulsory requirement in the functioning of the internal market.<sup>8</sup> At the same time, the EUCJ proposed that the principle of public interest could serve as a justified reason to limit the free flow of products and services in the internal market. In the judgement of other cases<sup>9</sup>, the EUCJ also ruled that the EU and its Member States may, based on reasons of public interest or public health, institute regulations and laws with regard to labelling, information disclosure or other compulsory measures. Labelling is an important part of the food safety chain. In the food industry, the components and ingredients of food products are usually fairly complicated. Thus labelling, which informs buyers of correct information and characteristics of food products and assist consumers to make informed choice<sup>10</sup>, becomes an important policy instrument for the EU and Member States to strengthen food safety.

Although the autonomy of private law implies that consumers are not usually the minority in society, the choices they make are limited due to the complexity of food processing procedures and industry structure. Therefore, based on the theory of public authority interventionism, labelling is justified to balance the information asymmetry between consumers and producers of food products.<sup>11</sup> Food safety, due to its wide range of influence on consumers, is a collective right that deserves the attention from governments all over the world (Brownsword, 2008). Since 2002, the EU, USA and Japan have used the term "food safety" as the official legal term for basic law governing food products. These regulations, based on the shared interest in safeguarding consumer interests and public health, and fostering robust development and fair competition in the industry, include EU Regulation 178/2002, which established EFSA and other food control procedures, the Food Safety Basic Law<sup>12</sup> of Japan and the Food Safety Modernization Act<sup>13</sup> of the USA.

In Taiwan, during the 6<sup>th</sup> Legislative Yuan session in 2014, several legislators and scholars proposed to add to Article 1 of the Act Governing Food Safety and Sanitation, the principle of "consumer protection" as its founding philosophy. The proposed line of content, according to proposal No.1722 of the Legislative Yuan, read that "this Act is enacted to regulate and govern food safety, to ensure food quality, consumer interests and the health of citizens, and to promote robust development and fair competition in the food industry." The proposition nevertheless failed to pass. Currently, Article 1 of the Act only provides that "this Act is enacted to govern food sanitation, safety and quality, and protect the health of citizens".

As indicated by the FAO, there are international norms making the protection of consumer interests the centrepiece of food law (FAO, 2006). In Taiwan, the Grand Justices interpretation No. 577 also requires that the government take action to control food safety in order to protect such public interests as consumer interest and public health. Constitutionally speaking, consumer protection and public health are important components of basic rights, justice and public reason (Rawls, 1993). Therefore the inclusion of consumer protection still should remain a priority in future amendments of the Act Governing Food Safety and Sanitation.

8 Case 120/78, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein* [1979] ECR 649.

9 Case C-448/98 *Guimont* [2000] ECR I-10663.

10 Case C-12/00 *Commission v Spain* [2003] ECR I-459.

11 Case C-383/97 *Van der Laan* [1999] ECR I-731. Cf Stuyck (2000); Howells and Wilhelmsson (2003).

12 Food Safety Basic Law is passed on 23 May 2003 as Law no. 48, and amended on 11 June 2003 as Law no. 74.

13 FDA, FDA Food Safety Modernization Act (FSMA), Public Law III-353, January 4, 2011, 124 STAT. 3885.

The importance of the institution lies in its capacity to initiate regulations, establish an organisation and enforce laws. It provides the rules of the game for all participants in the functioning of politics and economy. Douglass North, recipient of 1993 Nobel Memorial Prize, adopts an economic historical perspective to analyse the impact of institutions on economic growth and explains the reasoning, processes and consequences of institution change. According to North, institutions organise and regulate social economic relationships, establish order, stimulate the accumulation of knowledge and innovation, and promote market functioning and government efficiency; in the long run, institutions govern the development trajectory and economic performance of a country (North, 1990).

Institutions, such as food laws, risk assessment and management mechanisms, test laboratories, food police and law enforcement personnel, are the cornerstones for establishing a strong food control system characterised by public confidence and trust (Hood, Rothsteinm and Ballwin, 2001). These organisations and policy instruments should be directed by works conducted by professional scientists and functional experts who enjoy a certain degree of independence and who have clear lines of responsibilities (Majone, 1997). A robust institutional framework including food police can therefore maintain the efficient execution of food law, ensure the legality and justifiability of food policies, and increase the credibility of food safety for consumers at large. The food safety system of the EU exemplifies a comprehensive and robust institution, and serves as a great point of reference for Taiwan to modernise its food governance and facilitate the execution of food safety laws.

### **Food Police in the EU**

In order to strengthen the implementation of food safety laws in the EU and Member States, a multi-level food safety police system has been established within Europol and the police departments of Member States.

#### ***Food Police within the Europol***

According to the EEC Treaty in 1958, a common market, in which goods, persons, services and capital could move freely, was established. To counter potential criminal activities induced by the four freedoms in common market, a non-official police network within the Member States was established in the 1970s. In the 1991 Luxemburg Summit, then Chancellor of Germany Helmut Kohl advocated for a European criminal police force making reference to the FBI of the US. The 1992 Maastricht Treaty K1(9) stipulates that the police forces within the Member States should cooperate with one another. The Europol Convention was passed in 1995 according to K3 of the Maastricht Treaty, and put into force on 1 October 1998. The Council of the European Union, on 6 April 2009, passed a decision, based on the EU Treaty 30(1)(b), 30(2) and 34(2)(c), to establish Europol as a permanent institute; the decision became effective on 1 January 2010.<sup>14</sup> The headquarters of Europol is located in The Hague, the Netherlands. In 2015, it recruited about 900 staff whose professions include criminal, border and customs police, and included about 100 scientists with expertise in criminal analysis. In terms of its budget, in 2011, Europol was allotted about 84 million euros as part of the EU annual budget. According to Article 2 of its founding decision, Europol has legal personality which significantly raises its legal status within the EU and Member States.

Since its founding as a permanent institution within the EU on 1 January 2010, the responsibilities and tasks of Europol have been expanding to include preventing cross-border criminal activities. Other targets include those listed in the Annex of 2009/371/JHA Decision: drug smuggling, money laundry, immigration, human trafficking, murder, organ trading, ethnic

<sup>14</sup> Council Decision Establishing the European Police Office (Europol), 2009/371/JHA, OJ 2009, L121/37.

extremisms, organised robbery, fraud, environmental crimes, corruption, computer crime, weapon smuggling, Internet attacks... etc. Europol would decide whether to investigate the aforementioned criminal activities according to their scale, impact and consequence. Since 2010, Europol has been investigating approximately 18,000 cross-border cases each year. Some include cross-border food fraud and criminal activities.

The primary tasks of Europol, according to Article 5 of Decision 2009/371/JHA, are:

4. to collect, store, process, analyse and exchange information and intelligence;
5. to notify the competent authorities of the Member States without delay via the national unit referred to in Article 8 of information concerning them, and of any connections identified between criminal offences;
6. to aid investigations in the Member States, in particular by forwarding all relevant information to the national units;
7. to ask competent authorities of the Member States concerned to initiate, conduct, or coordinate investigations, and to suggest the setting up of joint investigation teams in specific cases;
8. to provide intelligence and analytical support to Member States in connection with major international events; and
9. to prepare threat assessments, strategic analyses and general situation reports relating to its objective, including organised crime threat assessments.

Additional tasks of Europol are:

1. to develop specialist knowledge of the investigative procedures of the competent authorities of the Member States and to provide advice on investigations;
2. to provide strategic intelligence to assist and promote the efficient and effective use of the resources available at national and Union levels for operational activities and the support of such activities;
3. the training of members of their competent authorities, where appropriate, in cooperation with the European Police College;
4. the organisation and equipment of those authorities by facilitating the provision of technical support between the Member States;
5. crime prevention methods;
6. technical and forensic methods and analysis, and investigative procedures.

According to Article 11, Europol shall maintain the Europol Information System (Europol, 2014). In the beginning of 2013, Europol indicated that about 3,600 criminal Organisations in 28 Member States had engaged in food criminal activities. The percentage of criminal activities involving food products, cosmetics, medicines, and toys has risen from 14.5% in 2010 to 28.6% in 2011. A specific case Europol has investigated is the horse meat scandal of February 2013 (Europol, 2014; Fox News, 2013).

### ***Horse Meat Scandal***

In February 2013, it was found that the beef sauce in frozen spaghetti products sold in Tesco, a Britain grocery franchise, contained up to 60% horse meat. This discovery immediately triggered a scandal. According to food law in the U.K., horse meat is forbidden food products. In addition, the EU stipulates that food products that contain more than 1% horse meat should be appropriately labelled.<sup>15</sup> Due to the international nature of the horse meat supply chain, on 15 February, the EU approved taking samples to examine all beef-related products in the EU in order to restore consumer confidence.

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<sup>15</sup> Commission Recommendation 2013/99, OJ 2013, L48/28.

The EU Standing Committee on the Food Chain and Animal Health and the Member States together conducted the sampling tasks. The mission lasted two months and cost 2.5 million euros – an expense shared between all 28 Member States. In total, 2,250 samples were examined, with between 10 to 150 samples taken from each Member State. In addition, to detecting in the horse meat possible residues of phenylbutazone, which is harmful to human health and therefore prohibited by the EU, the plan requires an examination of one sample out of every 50 tons of horse meat, and each Member State had to carry out a minimum of five tests (European Commission, 2013). On 15 April 2013, the EU published the test results: 193 samples contained more than 4.5% horse meat and 19 samples contained more than 0.5% of phenylbutazone. Due to the harmful effect of phenylbutazone to human health, the horse meat scandal was not only a food safety event, but a food fraud one. In reaction, the EU notified the Member States through the Rapid Alert System for Food and Feed (RASFF) of the need to implement appropriate measures to address the crisis (EFSA and EMA, 2013). In fact, the Food Safety Authority Ireland (FSAI), upon the discovery of horse meat adulteration on 8 February 2013, utilized the RASFF to notify other Member States of the problem (European Union, 2014).

The role that Europol played in the horse meat scandal was to trace and investigate food fraud. The Food Standards Agency (FSA) of the UK also shared files relevant to the horse meat investigation with Europol to engage in investigation at a pan European level (BBC News, 2013). Therefore, Europol has become the primary institution of official control at the European level, conducting food safety related tasks that involve information exchanges, law enforcement, and cross-border investigations.

## **Food Police within the Member States**

### ***Food Police in Some EU Member States***

In a number of EU Member States, there exist food safety police or other institutions whose missions are to curb food crime. An example of which is the food crime enforcement unit in France under the OCLAESP, Ministry of Interior France. This unit is the police authority responsibility for carrying out on-site investigations of food factories and enterprises. In 2013, the unit has a 3 million euro annual budget (H M Government, 2014).

In Italy, the food crime unit, Carabinieri, is empowered to investigate food crime and fraud, react to emergencies, and arrest and detain related personnel and goods. The food safety enforcement units in France and Italy exemplify cross-border efforts to curb food crime, and have developed into a European and international intelligence network that meets for one week every year to discuss key missions.

Food safety enforcement units in Germany used to function on the level of Lander. After the horse meat scandal, the government has begun to establish food safety and fraud enforcement units at the federal level. In Denmark, the food crime agency, established in 2005, enjoys investigatory and enforcement power and has revealed illegal activities practiced by food businesses. The agency is able to carry out 16 major investigation missions (H M Government, 2014).

In the Netherlands, where agriculture accounts for a large part of its economic output, food crime authorities have existed in different forms for more than 60 years. Currently, the Dutch food crime competent authority enjoys full police authority and especially targets organised food crime activities. In 2012, the food crime agency investigated 246 food crime signals, and successfully prosecuted 77 criminal charges in 24 major investigations. The agency confiscated assets worth more than 6.5 million euros. In 2013, the agency conducted three investigations regarding the horse meat scandal, and arrested a businessman who mislabelled and sold 300 tons of horse meat as beef.<sup>16</sup>

16 European Commission, DG Health and Consumers-Food and Feed Safety. Report missione



In reaction to the horse meat scandal, the British Food Safety Authority, FSA, was assisted by other government agencies, including the Police Department, Home Office, Ministry of State for Agriculture and Food, National Fraud Intelligence Bureau, and Intellectual Property Office. Different government institutions share food safety related intelligence on the Government Agency Intelligence Network (GAIN). During the cross-border food fraud mission, the government confirmed that a professional and independent food safety unit is indispensable to ensuring food safety within and beyond national borders.

On behalf of the UK government, Chris Elliot, Professor at Queen's University Belfast, conducted an independent investigation and reported on the framework for food crime prevention. The report showed that the annual cost of establishing a new food safety police or food crime prevention institution ranges from 2 million to 4 million pounds. In the initial recruitment stage, the cost should not exceed 2 million pounds. As the institution begins to function and expand, the budget should increase to perhaps 4 million pounds. In response, the FSA indicates that if the new food safety unit is set within the FSA, its consumer protection and business support teams should be able to support its founding (H. M. Government, 2014). The report clearly shows that the new food safety police unit, an innovative agency of government policy and a food safety institution in the UK, should play an important role in supporting the implementation of food safety laws in the future.

### *The Carabinieri*

Food products and agriculture are important industries in Italy. The founding of the Carabinieri food safety police was intended to foster the development of the agricultural sector, ensure food safety, and protect Italy's culinary image and protect its interests in international trade and tourism. The Carabinieri food safety police has 1,200 staff and its headquarters is located in Milan (European Commission, 2012).

To carry out the regulations specified in EU Regulations 852/2004, 853/2004, 854/2004 and 822/2004, the Italy government, in its Decree 193/2007, stipulated that the competent authorities on food safety are the Ministry of Health and local health bureaus, and the Trento and Bolzano provinces. The Ministry of Health was founded, according to the Decree 172 on 13 November 2009. On 3 November 2011, the President of Italy passed Decree 108 establishing the Department of Veterinary Public Health, Food Safety and Collegial Bodies for Health Protection (DVPHNFSCBHP) within the Ministry of Health. Under the department there are three bureaus—animal health and medicine, food safety and nutrition, and consumer protection—responsible for ensuring food safety, the proper functioning of the food chain, and consumer protection at the national level. Enforcing the food safety law is the responsibility of 146 Local Health Units (AUSL) at the local level.

The Ministry of Agriculture Foodstuff and Forestry Policies (MIPAAF) is responsible for controlling plant health, food and feed quality, and pesticides and fertilizers.

The responsibilities of the aforementioned government agencies are to coordinate, guide, supervise, audit and investigate food safety events within the nation. However, exports of food products and international trade are the duties of the DVPHNFSCBHP and the Carabinieri Healthcare Command.

The Healthcare division, under direct guidance and supervision of the Ministry of Health, is a special and professional unit within the Carabinieri. The Healthcare Command is a central control system composed of three field offices and 38 territorial inspection units; it is in charge of examining and controlling adulterated food products, food fraud and smuggled medicine products. In addition to following the guidance of the Ministry of Health, the Health

Command of the Carabinieri can actively carry out investigatory missions, including on-site investigations of food businesses, voluntary examinations, product samplings and analyses. Staff of the Healthcare Command, upon completing the special training in food safety and healthcare techniques, have the duties and powers of official auditors and judicial police, and engage in food safety examination tasks (European Commission, 2012).

In July 2007, the Italian government established a cross-department conference to improve communications between government agencies on animal health and food safety. The key missions are:

1. to ensure the cooperation between government agencies to support the National Food Safety Committee;
2. to establish the operation procedures of national, territorial and local governments, and set up internal and external auditing standards;
3. to develop information systems at all levels of government to facilitate food safety management; and
4. to develop a robust network of food safety laboratories.

Regarding the legality of the aforementioned food safety operations, Article 13 of Decree 689/1981 stipulates that competent food safety agencies have the power to investigate. In addition, Articles 17 and 22 of Decree 441/1963 and Criminal Law No. 357 provide that law enforcement personnel at all levels of government enjoy the status of public servants and the judicial polices. Article 3 of Decree 283/1962 states that investigators, in the course of conducting their mission, may request assistance from the police. According to Decree 112/1998, Decree 283/1962 and Presidential Order 327/1980, the Ministry of Health, in addition to authorizing territorial authorities to control and investigate, also has the right to implement on-site investigations and to examine related documents.

The law on administrative penalties is founded on Decree 689/1981. In addition, a number of regulations target specific food businesses. These include: Decree 190/2006 (Article 18, 19 and 20 of Decree 178/2002), Decree 193/2007 (Decree 852, 853 and 854/2004), Decree 151/2007 (Decree 1/2005), Decree 142/2009 (Decree 183/2005) and Decree 198/2004 on animal welfare.

Most cases of proven illegal activity can be punished through administrative penalties, except for those subject to criminal penalties specified in Articles 5, 6 and 12 of Decree 283/1962, Decree 281/63 and Criminal Law No. 515 and 516. Nevertheless under the precautionary principle, investigators can recommend that prosecutors review a case based on criminal law though the case has been already processed with administrative penalties.

The amount fines levied depends on the gravity of crime and financial conditions of the charged. Other punishments include detention and seizure (Article 24 of Decree 689/1981), confiscation (Article 19), and forced business termination (Article 8 of Decree 30/12/1999 and Criminal Law No. 507 and 517). The ruling should also take recidivism into consideration. According to Decree 462, released on 7 August 1986, the Ministry of Health shall publish a list of fixed base operations that had engaged in selling low quality food products or food fraud products (European Commission, 2012).

In conclusion, the Italian government's emphasis on the enforcement of food safety law is embodied in the establishment of the national food safety police system. At the 2015 World Expo in Milan, food safety was one of the seven listed topics: agricultural product supply chain, biodiversity and agriculture, food education, cooperation on food safety issues, food that makes life better, and world culinarians. The Italian government again shows that food safety is not only a local issue, but is gradually evolving into a global problem (Milan Expo 2015, 2015).

## Lessons for Taiwan

### *The Implementation of the Food Safety Law in Taiwan*

According to Article 41 of the Act Governing Food Safety and Sanitation, competent municipal, county, or city authorities may take the following actions to ensure that foods, food additives, food utensils, food containers or packaging and food cleansers are in compliance with the provisions of this Act:

1. enter the place of manufacturing, processing, preparation, packaging, transportation, storage and sales, perform on-site examination and conduct sampling and testing;
2. in the course of conducting the duties referred to in the preceding paragraph, authorities may require food businesses in the place referred to in the preceding paragraph to provide the source, and amount of raw materials or products, information on processing, quality assurance, sales counterpart, sales volumes, and other supporting information, evidence or records, and such may be reviewed, detained and copied;
3. seal foods, food additives, food utensils, food containers or packaging and food cleansers found to be not in compliance with the provisions of this Act according to the examination and testing results;
4. order food businesses to suspend operations, or cease sales, when those businesses violate Paragraph 1 of Article 8, Paragraphs 1 or 4 of Article 15, or Article 16, or the standards prescribed by the central competent authority pursuant to Articles 17, 18 or 19;
5. upon receipt of reports of food poisoning accidents, authorities may order the relevant food businesses to make corrections within a prescribed time period or send the relevant food personnel to participate in a food poisoning prevention seminar at least four hours long at agencies (institutions) certified by the competent authorities at all levels. During the investigation, the businesses may be ordered to suspend operations, cease sales or undertake disinfection and seal suspect products.

Where necessary, the central competent authority may also execute the measures described in the preceding paragraph.

It is stated in the Act that when needed, the central competent authority may take the necessary action. However, it is not mandatory that the central competent authority take action. In August 2009, the Executive Yuan set up a Board of Food Safety whose mission was to consult in support of the Executive Yuan's food safety policies. A month after the plasticiser scandal in May 2011, the Executive Yuan established the Board of Food and Medicine Safety with the goal of promoting exchanges and discussions of information. Both lacked the mechanism necessary to trigger actions and execute. The addition of copper chlorophyll to cooking oil, discovered on 16 October 2013, and the tainted oil scandal which erupted on 4 September 2014, testify to the inefficiency of the Executive Yuan's execution of food safety law.

In response to the 2014 tainted oil scandal, and in an effort to restore consumer confidence regarding food safety in Taiwan, the government specified the mission of the Food Safety Board: "To enhance the coordination, monitoring, promotion, and inspection of national food safety affairs, the Executive Yuan shall establish the Food Safety Board. The Premier of the Executive Yuan shall serve as the convener with the participation of the heads of other relevant ministries and commissions, experts, scholars, and representatives of non-governmental organisations to take charge of inter-agency coordination for food safety risk assessments and management measures, as well as to establish the alert and auditing system for food safety and sanitation. The Food Safety Board shall meet once at least every three months. When necessary, a temporary meeting may be convened. The convener shall appoint a Minister without Portfolio or a ministry

head to act as the Chief Executive of the Food Safety Board, and the central competent authority shall be in charge of staff affairs.

Each municipal/county/city government shall establish the Food Safety Board; the head of the municipality/county/city shall serve as the convener to take charge of inter-departmental coordination for the food safety management measures. A meeting shall be convened once at least every three months.

Decisions made by the Food Safety Board in Paragraph 1 shall be carried out and implemented in compliance by relevant ministries and commissions. Each quarter the Executive Yuan shall announce the supervision results included in its administrative policies report to the Legislative Yuan every year.

The regulations governing the formation, tasks, parliamentary procedures and other matters to be complied with for such Food Safety Board in Paragraph 1 shall be prescribed by the Executive Yuan.”

On 13 February 2015, the government laid out the principles governing the establishment of the Food Safety Board. Accordingly, the Board shall include 22 to 28 members and be composed of the Premier, Minister of the Ministry of Health and Welfare, three to five experts, representatives from related civil Organisations, five to nine representatives from consumer groups, and officials from the Ministries of Finance, Education, Justice, Economic Affairs, Foreign Affairs, Interior, Health and Welfare, Environmental Protection Administration, Mainland Affairs Council, National Communication Commission, National Police Agency and Fair Trade Commission. In 2015, the membership of the Board consisted of 14 governmental officials and 14 professionals and civil representatives. The Executive Secretary is headed by the Minister of Health and Welfare. The Board meets every three months and emergency meetings are held if necessary.

The Board is beneficial to government integration and the execution of food safety as Articles 2(1) and 3 of the Act stipulate that the Executive Yuan shall announce the supervision results, including in its administrative policies, and report to the Legislative Yuan every year. However, it might lack substantial contribution as the Board meeting is held every three months and the Board’s mission is merely to negotiate among ministries. Therefore, the government should further establish a food safety police, food safety laboratories, and risk assessment institutions to ensure that food safety regulations and on-site examinations are implemented.

### ***Food Police Reforms in Taiwan***

According to Article 41 of the Act, the municipal or county/city competent authority is responsible for food product examination and control. In fact, before the addition of Article 42(1) on 18 November 2014, responsibility to inspect food products was assigned to nurses in local health bureaus. The employee turnover rate was high because the position lacked police authority and workload was relatively high. Therefore, the performance of food safety examinations was relatively poor in Taiwan. For the police, food safety related tasks are not considered part of their assigned tasks, so there is no incentive to safeguard food safety. Although Article 42(1) stipulates that the police are responsible for cooperating in food safety related missions, the specific degree of cooperation still needs to be clarified and the police do not have the power to act in this regard. Furthermore, the competent authority that governs food safety does not have a police force. Therefore it lacks the power to initiate missions to curb illegal activities regarding food safety. In addition, the lack of a clear boundary between food safety authority and the police force results into the inability to respond promptly to emergency cases. Therefore, the government must establish a permanent food safety police force to conduct professional food inspections and audit missions daily and promptly. The Executive Yuan, in particular, is responsible for

establishing a food safety police force under the Ministry of Health and Welfare so that it meets the requirements laid out in Article 2(1) of the Act

In December 2013, the number of police officers in Taiwan was 73,959. Among these were the following Special Forces: 269 National Park Police; 1,401 Highway Police; 635 Railroad Police; 1,456 Aviation Police; and 146 Environmental Police and 170 Forestry and Preservation Police within the First Special Police Corp (National Police Agency, 2013).

As a result of the 2014 restructure of the Executive Yuan, National Park Police, Special Force Police, Environmental Police, Preservation Police and Gaoping River Police were merged into the Seventh Special Police Corp, amounting to totally 957 officers. Before 2014, there was no sign of establishing food safety police.

The government was made aware of the food safety issues as a consequence of the 2014 tainted oil incident. On 24 October 2014, the National Police Agency initiated the “Cleansing Project” with the aim of cooperating with the Ministry of Health and Welfare to conduct examination missions throughout Taiwan (National Police Agency, 2014). The Project lasted one month and targeted only underground food businesses. Without a permanent food safety police, the government is incapable of guarding food safety in a regular, systematic and integrated way. In fact, the Legislative Yuan, when reviewing the restructuring of the Ministry of Health and Welfare, did recommend establishing a food safety police force, but this recommendation was not adopted in the end (Official Announcement Office of the Legislative Yuan, 2014).

Being that food safety has evolved into a national security problem, the government should be doggedly determined to establish a food safety police force. It is recommended that a food safety police force be set up under the Ministry of Health and Welfare with an initial size of about 300 officers, and that this number be gradually increased to 600.

Establishing a professional food police force would allow for:

1. consolidating the professionalism in food safety inspection and analysis;
2. strengthening the implementation of daily and on-site inspection;
3. developing methodologies and technical standards around investigating food fraud and food criminals;
4. establishing an information system on illegal food safety related activities to further assist systematic and regular tracking mission;
5. establishing a cooperation network between the central and local authorities that are in charge of food safety;
6. developing the prosecution standard of food safety crime and respond to cases of emergency;
7. integrating the responsibility and power of food safety inspections and risk management; and
8. developing international exchange of food safety police practices, analytical technology, and cross-border inspections, and bridging the practices and standard of food safety to international norms.

It is recommended that the Act Governing Food Safety and Sanitation include an Article stipulating that a food safety police force be established within the central competent authority. The police force should have the power and responsibilities of judicial police and engage in the inspection, control and prevention of food safety incidents. This should resolve the lack of regularity and professionalism in efforts to curb food safety breaches.

Ronald Dworkin, in *Taking Rights Seriously* (1977), argues that if government authorities do not treat consumer interests and public health seriously, then as a consequence the public would not treat food law and law in general with respect, thus rendering food safety policies

futile (Dworkin, 1977). It is through to the establishment of independent national food safety laboratories, food police, and food safety risk assessment committees that the government is able to demonstrate its determination to resolve food safety problems (Prosser, 2010). In addition, the government needs to constantly reevaluate changes in the external environment in order to redistribute resources and reconstruct the institutional framework so that such organisations as national laboratories, food police and risk assessment committees are capable of responding to emergent food safety related risks and problems. It is through such efforts that consumer interests and public health are rightly protected, and that the general public benefits from having in place a sustainable food police framework (Dworkin, 1986).

## Conclusion

Since the EU food safety law passed in 2002, official food safety control has been marked by a multi-level institutional framework that includes the EFSA, EU-RLs and food safety police. The diverse institutional arrangement demonstrates that this Europeanisation of risk assessment, food inspection and auditing would significantly benefit the implementation of food safety law in Taiwan. Through high standard food controls, these institutions are the key to building a food safety mechanism that bases and focuses on consumer protection.

This paper reveals that the unit of food police in the EU and Member States would benefit from auditing food products, cracking down on illegal activities and serious implementation of food safety regulations. One of the prime goals of food police in the EU is to enhance legal enforcement and restore consumer confidence in the EU food market.

Since the breakout of major food crises concerning plasticiser additives and tainted oil, food safety in Taiwan has developed into a multi-facet issue in which individuals, families, industries are actively involved and affected. In a macroeconomic sense, this affects consumer interests, public health, food industries, tourism, international trade and the environment, among other issues. It is recommended that the Taiwanese government take reference to EU laws and practices, and establish a professional food police unit. By enforcing the domestic food police, Taiwan would be able to enhance its food law and policy enforcement while providing a sound standard of consumer protection for the general public.

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