



Food Science Dialog 2022

Hamburg, 14 September 2022

TOOLS AND EXPERIENCES FIGHTING FOOD FRAUDS IN ITALY

Francesco Aversano

Assoc. Professor at the University of Naples Federico II - Lawyer



Introduction

«Food fraud is about “any suspected intentional action by businesses or individuals for the purpose of deceiving purchasers and gaining undue advantage therefrom, in violation of the rules referred to in Article 1(2) of Regulation (EU) 2017/625 (the agri-food chain legislation)”. These intentional infringements to the EU agri-food chain legislation may hinder the proper functioning of the internal market and may also constitute a risk to human, animal or plant health, to animal welfare or to the environment as regards GMOs and plant protection products».

See https://food.ec.europa.eu/safety/agri-food-fraud/food-fraud-what-does-it-mean_en

Issues

Fondamental criteria to identify criminal behaviour could be found in the same principles of European Food Law

Art. 17 par. 2. REG. EC 178/02 Responsibilities

Member States shall enforce food law, and monitor and verify that the relevant requirements of food law are fulfilled by food and feed business operators at all stages of production, processing and distribution. For that purpose, they shall maintain a **system of official controls** and other activities as appropriate to the circumstances, including public communication on food and feed safety and risk, food and feed safety surveillance and other monitoring activities covering all stages of production, processing and distribution.

Member States shall also lay down the rules on measures and penalties applicable to infringements of food and feed law. The measures and penalties provided for shall be effective, proportionate and dissuasive.




Article 139 REG. EU 2017/625 Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and take all measures necessary to ensure that they are implemented.

The penalties provided for shall be effective, proportionate and dissuasive.

2. Member States shall ensure that financial penalties for violations of this Regulation and of the rules referred to in Art. 1 (European Agri-Food Law), perpetrated through fraudulent or deceptive practices, reflect, in accordance with national law, at least either the economic advantage for the operator or, as appropriate, a percentage of the operator's turnover.



In Italy, Legislative Decree 231/01 regulates **liability of entities for administrative offences dependent on crime** (including food fraud). Its provisions shall apply to entities having legal personality and to companies, firms and associations which do not have legal personality.

On several occasions it is possible to find that in food-court proceedings the public prosecutor contests the offence of fraud against the operator and, at the same time, the administrative offence against the company.

The intent of Italian legislator is to prosecute the **illicit profit** obtained by the company and obtained through the criminal behavior of the operator.

Starting point

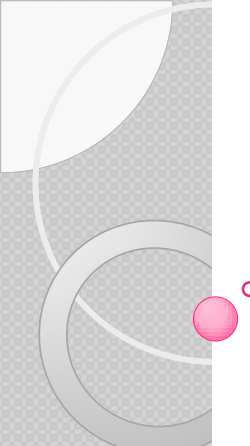
The starting point of this report could always be the European Food Law (in particular macrottexts, Reg. 178/02, 852/04, 1169/11, 1151/12) also for the detection of criminally relevant conduct or behaviour.

In this context, it's important to consider the profiles of

Conformation of domestic criminal law

or

Hetero-integration of the internal rule



The area of administrative offences should be distinguished from that of criminal offences and the reasons for which the established conduct is deemed to be outside the area of the administrative offence should be stated.

If, however, the operative areas of the penal provision and that currently constituting an administrative offence, pursuant to Italian L. n. 689/81 (that provides, among others, a **principle of speciality**), the latter provision could only be applied because it is special with respect to the other.

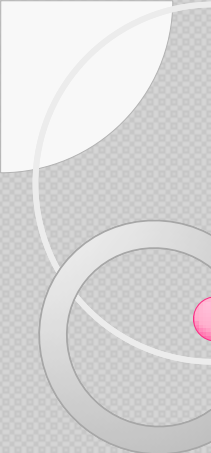
But...



In Italy many punitive administrative provisions are preceded by the penal reserve clause: **"Unless the fact constitutes a crime"**.

The “principle of subsidiarity” therefore takes precedence over the “principle of speciality”.

Criminal devolution, in the presence of all the constituent elements of the crime, must therefore be understood as prevailing over the administrative sanction.




◦ For example, in the matter of non-compliant traceability, there is a decree that states the following:

Unless the fact constitutes a crime, food and feed business operators who do not comply with the obligations laid down in art. 18 of Reg. EC No. 178/2002 are subject to the payment of a pecuniary administrative sanction from seven hundred and fifty euros to four thousand euros.

But Unless the fact constitutes a crime !

And this when is possible to ascertain the intent of the operator and serious effect depending on the behaviour.



And in fact, according to one of the rulings of the Italian Supreme Criminal Court (June 9, 2016, n. 31035), in the matter of food preparation with raw materials one identified as "safe" and another where the origin is not traceable, is configurable the **penal contravention** of art. 5, lett. b), L. n. 283/62 (poor storage conditions of food, which we'll talk about later).

Law n. 283/1962:

- is the **Italian special legislation** that provides for a series of penal provisions concerning the non genuineness, the bad ways of storing food, the soiling and, in general, the non-integrity of the food and the non-compliance of hygiene;
- is the **legislation that is added to the penal code** (dates from 1930), which provides for both crimes against public health, and against commercial loyalty.



Possible interpretative tools

In this context, it has been necessary on several occasions to **adapt, in case law, the internal penal system to the provisions of European Food Law.**

In the stages of assessment and judgment it's necessary **to conform the Italian standard (penal code and L. 283/62) to the European discipline.**



Therefore, the Italian Courts, *inter alia*, have often considered three guiding cases for the detection of criminal conduct:

Subjectively

Art. 17 par. 1 Reg. EC 178/02 - Responsibilities

1. Food and feed business operators at all stages of production, processing and distribution within the businesses under their control shall ensure that foods or feeds satisfy the requirements of food law which are relevant to their activities and shall verify that such requirements are met.

Art. 8 Reg. EU 1169/11 - Responsibilities

1. The food business operator responsible for the food information shall be the operator under whose name or business name the food is marketed or, if that operator is not established in the Union, the importer into the Union market.

Therefore, the Italian Courts, inter alia, have often considered three guiding cases for the detection of criminal conduct:

Subjectively

Art. 8 Reg. EU 1169/11 – Responsibilities

3. Food business operators which do not affect food information shall not supply food which they know or presume, on the basis of the information in their possession as professionals, to be non-compliant with the applicable food information law and requirements of relevant national provisions.

4. Food business operators, within the businesses under their control, shall not modify the information accompanying a food if such modification would mislead the final consumer or otherwise reduce the level of consumer protection and the possibilities for the final consumer to make informed choices. Food business operators are responsible for any changes they make to food information accompanying a food.

Therefore, the Italian Courts, inter alia, have often considered three guiding cases for the detection of criminal conduct:

Objectively

-Art. 8 (reg. EC n. 178/02) Protection of consumers' interests

Food law shall aim at the protection of the interests of consumers and shall provide a basis for consumers to make informed choices in relation to the foods they consume. It shall aim at the prevention of:

(a) fraudulent or deceptive practices;

(b) the adulteration of food; and

(c) any other practices which may mislead the consumer.

Therefore, the Italian Courts, inter alia, have often considered three guiding cases for the detection of criminal conduct:

Objectively

◦ - Art. 14 (reg. EC n. 178/02) Food safety requirements

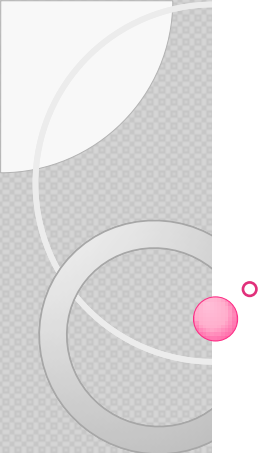
1. Food shall not be placed on the market if it is unsafe.
2. Food shall be deemed to be unsafe if it is considered to be:
 - (a) injurious to health;
 - (b) unfit for human consumption.
3. In determining whether any food is unsafe, regard shall be had:
 - (a) to the normal conditions of use of the food by the consumer and at each stage of production, processing and distribution, and
 - (b) to the information provided to the consumer, including information on the label, or other information generally available to the consumer concerning the avoidance of specific adverse health effects from a particular food or category of foods. (This is a profile that can strongly affect the relevance of food fraud)**

Therefore, the Italian Courts, inter alia, have often considered three guiding cases for the detection of criminal conduct:

Objectively

- Art. 7 (Reg. EU n. 1169/11) Fair information practices

1. Food information shall not be misleading, particularly:
 - (a) as to the characteristics of the food and, in particular, as to its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production;
 - (b) by attributing to the food effects or properties which it does not possess;
 - (c) by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics, in particular by specifically emphasising the presence or absence of certain ingredients and/or nutrients;
 - (d) by suggesting, by means of the appearance, the description or pictorial representations, the presence of a particular food or an ingredient, while in reality a component naturally present or an ingredient normally used in that food has been substituted with a different component or a different ingredient.



On this point see Supreme Penal Court, dec. No. 19093 of 3.3.2013: legitimacy of the **seizure of packages of pistachios of non European origin**, with a label bearing in large letters "Sicilian delicacies, shelled pistachios" and at the bottom, in much smaller print, poorly legible to the naked eye, the indication "Ingredients: Medit. (*Mediterrano, editor's note*) pistachio nuts" as the label of those products was considered to be capable of generating the reasonable belief in the consumer that, contrary to the truth, the pistachio sold with that label was of Sicilian origin.

In this judgment the Italian Court clearly refers to the Regulation 1169/11, in particular art. 7.



With regard to **criminal law protection**, a breakdown between **health and trade fraud** should be considered.

In this perspective, the main **illicit phenomena** could be divided into:

-"**alteration**": even spontaneous degeneration of the food (it can be represented independently of the specific will of the subject, e.g. alteration resulting from exceeding the expiry date of the food or poor storage conditions);

-"**adulteration**" means activities aimed at modifying the composition of the food by adding or subtracting constituent elements thereto;



With regard to **criminal law protection**, a breakdown between **health and trade fraud** should be considered.

In this perspective, the main **illicit phenomena** could be divided into:

-"**counterfeiting/falsification**" means improper use of names, trademarks and criminal activities aimed at damaging the substantive and formal identity of the food;

-"**sophistication**": fraudulent procedure that presupposes the conscience and the voluntariness of adding alien substances in order to mask the real essence of the product. It manifests itself in a real falsification (*immutatio veri*).

Italian system and experiences


ILLICIT FOOD SCHEME

Penal Code (health and trade fraud – Serious crime)

Law No. 283/62 (penal misdemeanors-contravention)

Decriminalization (l. 689/81 - d. lgs. n. 507/99)

Administrative offences (Labelling, Not hygienic-sanitary conformity, inadequate traceability, materials and articles intended to come into contact with food)



In addition to the activities of (ordinary) government and official control carried out by the competent authorities, important functions are also attributed to the police, supervisory bodies carrying out specific investigative investigations related to judicial investigations or programmes for the suppression of criminal offences. Compared to the planned controls, carried out by the Competent Authorities, which operate mainly on the level of risk prevention, these activities, carried out on their own initiative or ordered by the judicial authority, are aimed at the search for wrongdoing and the persecution of the guilty, representing in fact an organization of excellence at national and international level for the fight against fraud in the agri-food sector.

In particular, for the subjects of the Plan, these functions are carried out by: Carabinieri Health Protection Command (NAS); Command Unit Forestry, Environmental and Agri-Food of the Carabinieri; Body of the Harbour offices - Coast Guard; - Guardia di Finanza (The law enforcement agency for financial crime).

See <https://www.salute.gov.it/pianoNazionaleIntegrato2020/sezionePianoNazionaleIntegrato2020.jsp?cap=capitolo2&sez=pni-cap2-autoritacompetenti>




Art. 2 par. 3 of the Legislative Decree 27/2021 describes the **competent Authorities to deal with official controls.**

(...)

The Ministry of Agriculture, Food and Forestry is Competent authority in the following areas:

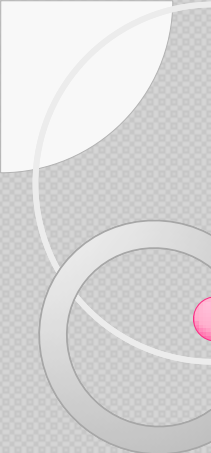
- a) foodstuffs, with regard to rules aimed at ensuring fair trading and the protection of interests and information of consumers, including labelling rules, for profiles without impact on food safety (...);
- b) feed, with regard to rules to protect quality and merchandise, including labelling, for profiles without impact on feed safety, but which may affect the correctness and transparency of commercial transactions;
- c) protective measures against organisms harmful to plants;
- d) organic production and labelling of organic products;
- e) the use and labelling of protected designations of origin, protected geographical indications and specialities' guaranteed traditional.



See the **2021 Report** on the activities carried out by the Inspectorate for fraud repression and quality protection of the agri-food products and foodstuffs (ICQRF)

The action of the ICQRF is related to the domestic market and to the growing international activities in order to fight any frauds, usurpations, Italian sounding phenomena and counterfeiting, to the damage of Made in Italy quality and consumers, as well as the fight of serious agri-food crime.

https://www.politicheagricole.it/ICQRF_Report_attivita_2021



Results of 2021 control activity confirm, once again, the efficiency of the Italian control system and the high ranking for ICQRF among the main anti-fraud authorities in the world: 61,756 anti-fraud checks, of which 49,511 inspections and 12,245 laboratory tests, 33,404 business operators inspected, 62,316 products checked. Irregularities concerned 15.9% of all operators inspected, 11.6% of products checked and 9.0% of samples analysed. ICQRF, also in 2021, contributed with its technical expertise to the fight against unlawful acts and criminal behaviour in the agri-food sector: • 186 crime reports, 4,699 administrative penalties and 4,954 warnings issued to operators; • about 5.522 million kg of goods seized with an economic value over 9.1 million euros; • 955 interventions outside national borders and on the web to protect Geographical Indications. • Controls regarded food products for more than 90% and agricultural inputs for 10% (feed, fertilizers, seeds, plant protection products). Looking at each agri-food sector, 19,628 checks regarded wine and wine products, 9,324 olive oils, 6,137 dairy sector, 3,758 fruit and vegetables, 3,411 cereals and by-products, 3,167 meat, 2,626 preserved vegetables, 1,996 spirits, 1,589 honey, 532 eggs, 346 sugars, and 3,370 other sectors. Inspections and laboratory tests on agriculture inputs were in total 5,872.

(See. p. 6 of the ICQRF Report)



Criminal Code: "Crimes against public safety"

Art. 439 Poisoning of water or food substances

Art. 440 Adulteration and counterfeiting of foodstuffs

Art. 442 Trade in counterfeit or adulterated foodstuffs

Art. 444 Trade in harmful food substances

Criminal Code: “Crimes against public safety”

- The **danger of substances** cannot be assessed in abstract terms, that is to say as a purely hypothetical situation, but must be ascertained specifically by means of **evidence appropriate** to the individual food substances linked to suspicion.

The crime of trading in harmful food substances presupposes, as to the objective element, that the substances to be traded **have the capacity to cause harm to public health**.

In short, according to the Court, for the purposes of the configuration of the health crime, **the danger of the foodstuff to be traded must exist and be proved** (at any time prior to or at the same time as the transfer of the goods) **the awareness of the danger and the voluntary nature of the trade**.

Supreme Pen. Court, Sec. III, 22/03/2011, n. 1150



◦ Criminal Code (Title II) "Crimes against Public Administration"

Art. 356 Fraud in public procurement

Any person who commits fraud in the execution of supply contracts or in the fulfilment of other contractual obligations referred to in the previous article shall be punished by imprisonment of one to five years and with a fine of not less than EUR 1032.

The person in charge may be held liable for the offence referred to in art. 356, c.p. if it supplies food of a different nature and quality from that specified in the recommended diet tables approved by the ASL (local health Authority) and does not respect the relative modalities of storage, supplying it chilled instead of frozen.

Sup. Pen. Court, sec. VI, sent. 20.12.2018, n. 57858



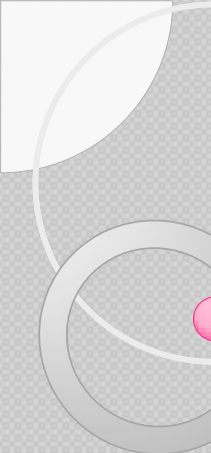
Code penal TITLE VIII “Crimes against the public economy, industry and commerce”

-Art. 515. Fraud in the practices of trade.

Any person who, in the exercise of a commercial activity, that is, in a shop open to the public, delivers to the purchaser a movable thing for another, or a movable thing, for origin, source, quality or quantity, other than that declared or agreed upon, is punished, if the fact does not constitute a more serious crime, with the imprisonment up to two years or with a fine up to the euro 2.065.

(At this point, we can know the paltry nature of the fine !)

The protected interest is the function of the State to ensure the fair conduct of business. The objective element of the offence consists in the **conduct of delivering to the food other than declared or agreed (*aliud pro alio*).**



Code penal TITLE VIII “Crimes against the public economy, industry and commerce”

-Art. 515. Fraud in the practices of trade

Case: omitted indication in the menu of the frozen character of the food. Attempt of fraud.

The availability in the kitchens of a restaurant of frozen foods not indicated as such in the menu perfects the attempt of fraud on the market, regardless of the beginning of a concrete negotiation with the individual customer.

Sup. Pen. Court. Sec. III Pen. 16 June 2017, No. 30173



Code penal TITLE VIII Crimes against the public economy, industry and commerce

- **Art. 516. Sale of non-genuine food substances as genuine**

Anyone selling or otherwise marketing as genuine non-genuine food substances is punished with imprisonment for up to six months or with a fine of up to 1,032 euros.

The protected interest is **fairness in trade**



Code penal TITLE VIII Crimes against the public economy, industry and commerce

- **Art. 516. Sale of non-genuine food substances as genuine**

This crime referred is a dangerous offence, punishing those who simply place on the market substances that are not genuine but sold as genuine and, as it relates to a preliminary stage of the actual commercial relationship between two parties, represents **a form of protection in advance and subsidiary to that of fraud in commerce provided for by art. 515 c. p. which, however, exists, in the form consumed or attempted, in the event of material delivery of the goods to the purchaser or of acts unequivocally directed to that end.**

Sup. Pen. Court, Sez. III, judgment No. 50745 of 30 November 2016.



Code penal TITLE VIII Crimes against the public economy, industry and commerce

- Art. 516. Sale of non-genuine food substances as genuine

The offence referred to in art. 516 c.p., sale of non genuine food substances as genuine, the sale of a food produced without respect for all the production methods prescribed by the specification, as in the case of infringement of the rules governing the feeding of milk-producing animals by which a cheese identified by the regulation on the recognition of names is prepared. (Case concerning the violation of the D.P.R. 9 February 1990 containing the product specification of the designation of origin for Parmesan cheese).

Sup. Pen. Court., Sec. III, judgment no. 9643 of 21 March 2006

◦ Code penal TITLE VIII Crimes against the public economy, industry and commerce

- **Art. 516. Sale of non-genuine food substances as genuine**

For the purposes of the configurability of the crime referred to in art. 516 c.p., the **concept of "genuineness"** is not only the natural one, but also the formal one established by the legislator with the indication of the essential characteristics and requirements to qualify a certain type of food. Therefore, wine (in this case, sparkling wine) which does not comply with the parameters laid down by European Union regulations and national legislation must be considered not genuine. Sup. Pen. Court, Sec. III, 05-06-1998, No. 8662

Code penal TITLE VIII Crimes against the public economy, industry and commerce

- Art. 517. Sale of industrial products with false signs, marks and indication.

Any person who places on sale or otherwise put in circulation works of art or industrial products, with national or foreign names, marks or distinctive signs, capable of misleading the buyer as to the origin, source or quality of the work or product, is punished, if the fact is not punishable as a crime by another provision of the law, with imprisonment for up to two years or with a fine of up to twenty thousand euros.

Code penal TITLE VIII Crimes against the public economy, industry and commerce

- **Art. 517. Sale of industrial products with false signs, marks and indication.**

The interest protected is the economic order, against deceptions aimed at consumers and honesty in trade.

Fundamental crime for the fight against fraud in the Made in Italy sector.

The phenomenon of **Italian Sounding** is the set of practices of production and marketing of products that "sound" like Italian, but in reality they are not. For this purpose, agro-piracy uses words, colors, images, recipes and names that recall Italy or fraudulently evoke other Italian denominations, without actually having any link with the country.

Code penal TITLE VIII Crimes against the public economy, industry and commerce

◦ - **Art. 517. Sale of industrial products with false signs, marks and indication.**

The crime provided for by art. 517 c. p. regards the marketing of agri-food products bearing the mark "d.o.p." (in Italian DOP, protected designation of origin) which does not correspond to the **true or false designation**, since for products of a food nature, having a typical territorial character, the origin to which the sanction rule refers is not only the entrepreneurial one but, above all, the geographical one. In this case, they were peeled tomatoes marketed with the label "product of the PDO region San Marzano Pomodoro Pelati Italiani", but actually cultivated and harvested in Puglia (region outside the authorised area).

Sup. Pen. Court, Sec. III, No. 28740 of 19 July 2011

Code penal TITLE VIII Crimes against the public economy, industry and commerce

- Art. 517. Sale of industrial products with false signs.

The crime provided for by art. 517 cod. pen. concerns the putting into circulation of a beverage, to be composed by the consumer, evocative of the taste of an Italian "doc" wine. In this case the must supplied by the seller does not come from Italian vines, unlike what can be deduced from the label on the package.

It concerns the fraudulent placing on the market of "wine kits", containing must, caps and labels, bearing on the package the indications of Italian wines with protected designation of origin, the denomination "Italian wines" and the effigies of the Italian flag and the Colosseum.

Sup. Pen. Court, Sec. III, judgment no. 9357 of 9 March 2020



Code penal TITLE VIII Crimes against the public economy, industry and commerce

- Art. 517-bis Aggravating circumstance.

The penalties laid down in Articles 515, 516 and 517 shall be increased if the facts referred to therein relate to food or beverages whose designation of origin or geographical origin or specific characteristics are protected by the rules in force.



Code penal TITLE VIII Crimes against the public economy, industry and commerce

- Art. 517-quater. Counterfeiting of geographical indications and designations of the origin of agri-food products.

Anyone who contravenes or otherwise alters geographical indications or designations of the origin of agri-food products is punished with imprisonment for up to two years and with a fine of up to 20,000 euros.

The same penalty applies to those who, in order to make a profit, introduce into the territory of the State, destined for sale, sell directly to consumers or put in circulation the same products with counterfeit indications or denominations.

◦ Code penal TITLE VIII Crimes against the public economy, industry and commerce

- **Art. 517-quater. Counterfeiting of geographical indications and designations of the origin of agri-food products.**

This recent crime explicitly affirms the criminal significance of counterfeiting and alteration of geographical indications and designations of the origin of agri-food products, providing even broader protection than that attributable to art. 517 c.p., because art. 517 c.p. does not require the suitability of false indications to deceive the consumer public, directing **protection towards the economic interests of producers to use geographical indications or the designations of origin.**

Sup. Pen. Court, Sec. III, n. 28354, 8 July 2016



Law 283/62

In addition to the penal code, there is the Law 283/62 “**The Hygienic discipline of the production and the sale of food and drink**”, very important for the **precepts** (art. 5) and **criminal sanctions** (art. 6).

See the **fundamental art. 5** and with its different articulations.



Art. 5

It is forbidden to use, in the preparation of food or beverages for sale, or in any case to distribute for consumption, food substances:

a) deprived, in part, of their nutrients or mixed with substances of lower quality or otherwise treated in such a way as to vary their natural composition, without prejudice to the provisions of special laws and regulations.

The objective of this rule is not to protect the consumer from the danger to health (as a result of the use of harmful substances), but simply the consumer's guarantee against the improper use of substances of lower quality and nutritional capacity than the type of product.

Sup. Pen. Court, Sec. III, n. 516, 12.02.15



Art. 5

It is forbidden to use, in the preparation of food or beverages for sale, or in any case to distribute for consumption, food substances:

b) in poor storage;

There is the crime referred to in art. 5, lett. b), L. No. 283 of 30 April 1962, disputed in relation to foodstuffs held for sale in a poor state of preservation (in this case, bottles of mineral water stored "in a sunny place"), regardless of any change in their intrinsic characteristics, **it is sufficient that the ways of keeping them are "bad" for non-compliance with regulatory rules or even common diligence and caution.**

Sup. Pen. Court, Sec. III, 06/03/2003, n.19642

Art. 5

**It is forbidden to use, in the preparation of food or beverages for sale, or in any case to distribute for consumption, food substances:
b) in poor storage;**

The placing on the market of fruit outdoors and exposed to pollutants constitutes a breach of the obligation to ensure the proper storage of foodstuffs and to comply with specific provisions supplementing the precept. The judge based his conviction on what was reported by the witness, who pointed out that three vegetable crates were exposed outdoors and, therefore, in contact with atmospheric agents and exhaust gases of passing vehicles. This direct investigation by the judicial police is entirely sufficient to justify the allegation of criminal liability, having regard to a factual situation which is certainly relevant for that purpose, the existence of which is, moreover, confirmed by the applicant himself, where, in the appeal, it is acknowledged that the vegetables were displayed for sale on the pavement in front of the commercial establishment.

Sup. Pen. Court, Sec. III, Sent. No. 6108, ud. 17.1.2014

Art. 5

It is forbidden to use, in the preparation of food or beverages for sale,
or in any case to distribute for consumption, food substances:
b) in poor storage;

It is a principle of law constantly affirmed by the Supreme Court that **the offence of detention for the sale of food substances in a bad state of preservation, provided for by art. 5, lett. b), is configurable when it is established that the specific storage methods are suitable to determine the danger of damage or deterioration of the food, without identifying to this end the production of damage to health.**

The state of bad preservation concerns those situations in which food substances, although they can still be genuine and healthy, are poorly preserved, prepared, packaged or put up for sale without complying with the requirements intended to prevent the danger of their early degradation, contamination or otherwise alteration of the product.

Sup. Pen. Court, Sec. VII - Dec. No. 11496/2016



Art. 5

It is forbidden to use, in the preparation of food or beverages for sale, or in any case to distribute for consumption, food substances:

c) with microbial loads exceeding the limits to be laid down in the implementing regulation or by ministerial orders;

d) soiled, overgrown by parasites, in a state of deterioration or otherwise harmful, or subjected to processing or treatment to mask an existing state of alteration.

Art. 5

It is forbidden to use, in the preparation of food or beverages for sale, or in any case to distribute for consumption, food substances: g) by the addition of chemical additives of any kind not authorized or, if they have been authorized, without complying with the rules laid down for their use.

For the configurability of the offence case provided for by letter g) of art. 5 of L. n. 283 of 1962, both the production of an effect of damage to the health of the consumer, and the existence of a prejudice to the hygienic characteristics of the food are irrelevant. The danger, in this case, has, in fact, already been subject to assessment by the legislator in a binding way for the recipients of the standard and lies in the very fact that food intended for consumption is produced with the addition of unauthorized chemical additives. App. Court of Naples, Sec. II, 08-04-2011



Art. 5

It is forbidden to use, in the preparation of food or beverages for sale, or in any case to distribute for consumption, food substances:

g) by the addition of chemical additives of any kind not authorized or, if they have been authorized, without complying with the rules laid down for their use.

The importer of a foodstuff packaged abroad, whether it is a wholesale or retail trader, is liable for the offence of placing on the market a foodstuff which does not comply with the relevant legislation if it does not comply with the obligation to verify its conformity by means of checks, ensuring the quality of the product, even if imported in original packaging.

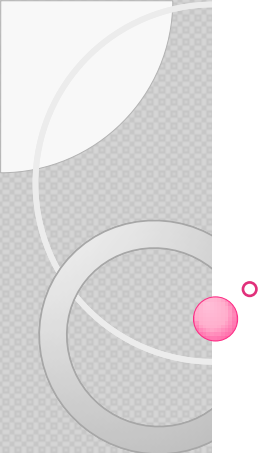
Sup. Pen. Court, Sec. III, No. 17547 of 7 May 2010



Art. 5

It is forbidden to use, in the preparation of food or beverages for sale, or in any case to distribute for consumption, food substances:

h) containing residues of products used in agriculture for plant protection and to protect stored food substances toxic to humans.



Art. 6 of L. n. 283/62 provides that, unless the fact constitutes a more serious offence, the offenders to the provisions of art. 5 are punished with the arrest up to a year or with the fine from € 309 to € 30.987.

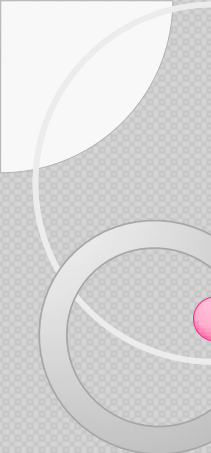
For the violation of the provisions referred to in letters d) and h) of art. 5 applies the penalty of arrest from three months to one year or fine from € 2,582 to € 46,481.



According to the classification of the offence, there are **two Italian types of seizure: criminal and administrative.**

These measures are accompanied by the **official detention** as provided for in Reg. EU No. 625/2017 and Legislative Decree no. 27/2021 (Provisions for the adaptation of national legislation to the provisions of Regulation EU 2017/625).

“**Official detention**” means the procedure by which the competent authorities ensure that animals and goods subject to official controls are not moved or tampered with pending a decision on their destination; it includes storage by operators in accordance with the instructions and under the control of the competent authorities (art. 3 point 47, Reg. EU 2017/625).



Art. 5 Legislative Decree no. 27/2021. Non-conformity (in the sector of health and hygiene)

1. In order to take measures proportionate to the risk, the competent health authorities assess non-conformities detected during official controls and other official activities.

They are defined as:

a) **Minor non-conformities (nc)** Those which do not cause immediate risk to human health or health and well-being of animals; (hypotesis of the administrative offence).

b) **Higher non-conformities (CN)** than those involving a risk for human health or for the health and well-being of animals; (Cases of possible crimes).

Art. 5 (Legislative Decree no. 27/2021) Non-conformity

2. In order to protect public health, the competent authorities, among other measures provided for in 137 and 138 of the Rules of Procedure, may proceed to one of the following the following types of seizure or official detention of equipment, premises, goods or animals:

a) **administrative seizure** in the cases provided for in Article 13 Law No. 689 of 1981;

b) **criminal seizure** in cases of detection of criminal offences;

c) **official detention** pursuant to Articles 137 (“General obligations of the competent authorities as regards enforcement action”) and 138 (“Actions in the event of established non-compliance”) of Settlement in residual cases.



a) **administrative seizure** (art. 13 L. 689/81);

b) **criminal seizure** (provided for the Italian Code of Penal Procedure);

c) **official detention**

These are protective and precautionary measures affecting the assets of the operator and the undertaking.

They are often applied by the police in the case of food fraud.



In short:

- the identification of the sanction is a substitute for the correct classification of the offence
- the identification of relevant behaviours in the same way as the European provisions of the Food Law
- the conformation and integration of the internal regulatory system seem to be fundamental



Conclusions

In Italy, there is an urgent need for **reform of the crimes in the agri-food sector and for new offences and more appropriate and effective sanctions to be imposed according to the case.**

Moreover, clarity on the **delegation of functions in the complex activity and new models of responsibility of the enterprise, in addition to or in reform of those established pursuant to Italian Legislative Decree 231/2001.**

The “Commission Caselli“, inter alia, drew up a draft law that moved along two lines:

- **the modification of agri-food offences;**
- **the extension of the administrative responsibility of the companies to some of the illicit ones so as reformulated.**



Conclusions

The draft on "New rules on agri-food offences" presented to the Parliament on 6 March 2020 is still in place.

The reform, whatever it may be, is also necessary (also with any modifications) to overcome the substitution role played by the National Courts, when they constantly adjust the internal models (now obsolete especially from the afflictive point of view) the European legislation and the liability criteria contained therein.

Conclusions

In Italy, the system of official controls is certainly effective and well-structured, by a firmly-established “culture of control” and a high level of competence of the controllers.

The aim is to improve the effectiveness of the instruments to combat food fraud, which is an increasingly large phenomenon at transnational level, with greater cooperation among the various competent authorities of the Member States.



Thanks for your attention

***Tools and experiences fighting food
frauds in Italy***

Hamburg, 14 September 2022

francesco.aversano2@unina.it