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Regulatory options to address food e-commerce in national legislation Policy and legal challenges



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Regulatory options to address food e-commerce in national legislation

Policy and legal challenges

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Abbreviations

ASEAN	Association of Southeast Asian Nations
B2B	business to business
B2B2C	business to business to consumer
BPOM	Food and Drug Advisory Agency [Badan Pengawas Obat dan Makanan] (Indonesia)
CA	competent authorities
CAGR	compound annual growth rate
CBEC	Crossborder E-commerce
CCFICS	Codex Committee on Food Import and Export Inspection and Certification Systems
CCFL	Codex Committee on Food Labelling
CFDA	China Food and Drug Administration
CFIA	Canadian Food Inspection Agency
DG SANTE	Directorate-General for Health and Food Safety of the European Commission
DSA	Digital Services Act (European Union)
EU	European Union
FBO	Food Business Operator
FIC	EU Regulation 1169/2011 on the provision of food information to consumers
FSL	China's Food Safety Law
GACC	General Administration of Customs of China
GMO	genetically modified organism
GSLPF	General Standard for the Labelling of Prepackaged Foods
ICQRF	Italian Department of the Central Inspectorate for Quality Protection and Fraud Prevention of Agri-food products [Dipartimento dell'Ispektorato Centrale della Tutela della Qualità e della Repressione Frodi dei Prodotti Agroalimentari]
IP	Internet Protocol
MS	Member States
NITDA	National Information Technology Development Agency
OCR	Official Controls Regulation

OECD	Organisation for Economic Cooperation and Development
P2B	Platform-to-Business
RMB	Renminbi Chinese currency (monetary unit: yuan)
SFCA	Safe Food for Canadians Act
SFCR	Safe Food for Canadians Regulations
SFSA	Syngenta Foundation for Sustainable Agriculture
SPS	sanitary and phytosanitary
TBT	technical barriers to trade
UNCITRAL	United Nations Commission on International Trade Law
UNGA	United Nations General Assembly
UNGCP	United Nations Guidelines for Consumer Protection
UNCTAD	United Nations Conference on Trade and Development
UNIDROIT	International Institute for the Unification of Private Law
WTO	World Trade Organization

Executive summary

This legislative study was developed to examine the main features and challenges of food e-commerce and assess how international and national legal systems have been addressing them to date, especially in terms of food safety and consumer protection. The study took into account various international instruments and analysed the regulatory initiatives of six selected jurisdictions to identify which regulatory options may be recommended to ensure safety in food e-commerce. A dedicated section in the study discusses self- and co-regulation in the domain of food e-commerce.

In recent years, food businesses have increasingly relied on online channels to sell and distribute food nationally and across borders, giving rise to a new phenomenon – food e-commerce – and to new actors populating the food chain: online traders, online intermediaries and more generally, online platforms. The COVID-19 pandemic and the social restrictions that ensued gave an unprecedented boost to this trend, shaping shopping habits and business models, as well as raising challenges to existing regulatory frameworks and enforcement mechanisms.

In food e-commerce, the above set of actors as well as consumers (or more generally customers) and possibly other entities (e.g. transport companies) come together following various arrangements to conclude and/or manage internet sales of food. In fact, food e-commerce appears in all shapes and sizes, from micro-businesses to multinationals, and some companies involved in food e-commerce today are real economic giants. As a schematic overview, internet sales of food may be divided into online groceries and online meals. Groceries and meals are generally sold by online traders/restaurants through their own online platform or through third-party online intermediaries. The latter may provide a mere online interface allowing traders and purchasers to conclude transactions and deal with delivery themselves. Or they may be involved, at various levels and intensity, in one or more “physical” stages of the operation: packing, storage, transport to the final customer.

Compared to traditional food trade, the success of food e-commerce may be explained by the benefits of, among others, home delivery, greater food choices, easier shopping experiences, access to peer reviews and ratings, limited food handling, and facilitated consumer identification in case of recall. Naturally, one of the main obstacles to benefitting from food e-commerce is the lack of digital access and literacy across many geographical areas, especially in low- and middle-income countries. Entering into food e-commerce transactions also comes with risks and challenges, affecting both consumers and enforcement authorities: e.g. increased anonymity and mobility of food businesses; inapplicability of withdrawal rights; lack of physical assessment of the product before purchase; enforcement difficulties as regards cross-border transactions.

Despite food e-commerce being a reality for many consumers and businesses today – even though differences clearly persist between various geographies and social groups –, most legal systems analysed in this paper have so far lagged behind in terms of regulatory response to the challenges it raises. Apart from some exceptions that will be illustrated shortly – i.e. Codex, Canada, China, European Union – most legal frameworks have not addressed food e-commerce *per se*, which thus needs to borrow regulatory reasoning from rules pertinent to conventional food trade or food laws in general, e-commerce/internet regulation as well as consumer protection laws.

The international legal framework is composed of a series of instruments (mainly soft law) that may provide guidance to national governments intended to adapt their laws to food e-commerce. Understandably, Codex texts are crucial as regards standards and good practices on food safety and hygiene, food controls, food imports and food labelling. Particularly on the latter, the Codex Alimentarius Commission has recently proposed draft guidelines on the food information requirements for pre-packaged foods to be offered

via e-commerce. Other relevant international initiatives – although not tailored to food e-commerce in itself - are the work of the World Trade Organization and the United Nations Commission on International Trade Law on e-commerce, the guidelines of the United Nations Conference on Trade and Development on consumer protection and especially the recommendation of the Organization for Economic Cooperation and Development on consumer protection in e-commerce.

The study also focused on the legal frameworks of six selected jurisdictions: Canada (federal), Chile, China, the European Union, Indonesia, and Nigeria. The following major findings were highlighted:

General overview

- Rules pertinent to food e-commerce are mostly included in e-commerce/internet, consumer protection, and food safety/food controls pieces of regulation.
- The regulatory response to food e-commerce has differed across all jurisdictions examined: Canada has recently initiated partial discussions on food e-commerce regulation (centred on information online); China has already enacted an extensive framework specific to food e-commerce (specifying food intermediary's liability, among other things); the European Union introduced certain limited provisions related to food information online and enforcement on e-commerce channels; Chile, Indonesia and Nigeria have not yet adopted regulation tailored to food e-commerce – however, the three jurisdictions (as well as Canada, China and the European Union) have worked on rules and guidelines regarding online platforms and/or e-commerce activities in general.

E-commerce/internet regulation

- Where adopted, all laws or guidelines on platforms' regulation introduce definitions of the various actors they apply to and put forward a set of obligations or best practices upon online actors, including preventive and proactive obligations. These include: registration/licensing; compliance with applicable laws; information and education; product safety and consumer protection; cooperation with competent authorities against illegal content; and dedicated food safety staff.
- Most frameworks also deal with intermediary liability: some jurisdictions provide immunity on the conditions that online platforms do not know of nor have control over the infringing content; take immediate action upon knowledge; and/or prove adequate preventive measures against such content. Other jurisdictions, such as China and Chile chose to limit the application of the intermediary liability immunity either by designing strict liability for intermediaries to limit notice and takedown rules (safe harbour), such as Chile, or by devising joint liability for intermediaries, for a similar purpose, like China.
- Laws or guidelines on platforms' regulation also call for user/consumer enhanced participation towards compliance, including through the setting up of effective complaint mechanisms.
- Cross-border E-commerce (CBEC) attracts regulatory attention of quite a few jurisdictions (China, European Union and Indonesia). Whereas Indonesia requires CBEC to follow rules as specified in traditional imports and exports, China introduces regulatory rules devised for CBEC deviated from pre-existing laws, being it tentative and experimental.

Consumer protection regulation

- Most jurisdictions examined include a general framework for consumer protection applicable to food products as well, providing rights such as product safety and quality; compensation for defective products; and clear and truthful information on the goods and the transaction.
- Among the examined consumer protection laws, the European Union, and the Chinese and Chilean legal frameworks provide rules specific to internet/distance sales. They address internet/distance sales

by focusing on information and withdrawal rights. The withdrawal rights have limited applicability to food e-commerce, and mostly concern non-perishable products.

- It is of equal importance to ensure consumers' right to redress. If this right can be consolidated in the context of food e-commerce in one way or another, consumer protection of food e-commerce may be better regulated. Again, this will be very much dependent on national laws.

Food regulation

- All jurisdictions analysed provide for general mandatory rules on food safety, food controls, and food labelling. However, apart from China and the European Union (EU), no (hard law) framework covers internet sales of food as such.
- In particular, while all frameworks seem to apply to all stages of the food chain and often provide definitions of the food business operators they cover, it is still unclear in most cases where different types of online platforms stand.
- As for food controls, all laws provide for registration/licensing requirements. Although, except for China and the European Union, rules on official controls do not indicate specific powers or measures adapted to internet sales of food.
- In most cases, food labels are defined broadly and apply, arguably, to food information displayed on webpages. More importantly, the recent adjustments to EU food information law and the development by Canadian authorities of voluntary guidelines on food labelling in an e-commerce context (as well as the work of Codex on the matter), are testimony to the primary role of information in food e-commerce regulation.
- Some jurisdictions create general rules or principles on CBEC through e-commerce/ internet regulation (e.g. China, European Union and Indonesia) discussed above. However, except for China, limited clarification could be found as regards potential specificities of cross-border food e-commerce (and specifically for food shipped for self-consumption through mail parcels).

Following the legal analysis on international and national/regional regulation relevant to food e-commerce, the study identified a number of recommendations to guide national legislators in their mission to build and implement effective regulatory mechanisms towards food safety and consumer protection on e-commerce channels. These recommendations include:

General overview

- Instead of addressing food e-commerce in one single piece of regulation, governments should follow a multidisciplinary approach, focusing on various regulatory areas: primarily, food safety and food controls, consumer protection and/or e-commerce/internet regulation.
- It is recommended that national legislators adapt or integrate existing legal frameworks where available, instead of introducing new laws altogether.
- Food e-commerce regulatory options should be flexible and focus on both preventive and reactive mechanisms.

Some of the regulatory aspects that could be taken into consideration and clarified to improve food e-commerce regulation within national law include the following:

The legal status of new online actors

- National governments should identify and define the various actors involved in food e-commerce.

- Food laws should clarify whether and which online actors fall within the existing framework applicable to food business operators.
- Food laws should introduce new responsibilities for the various actors involved in food e-commerce, especially online intermediaries or platforms in general (e.g. registration/licensing; supervisory mechanisms; traceability; cooperation with public authorities; food recalls; development of complaints mechanisms; staff training).

Liability of online actors

- It is recommended that national frameworks clarify which liability regime – and potential liability immunity – apply to online actors for infringements related to food e-commerce.
- Online intermediaries should generally be recognized to enjoy liability immunity mechanisms, such as the notice and takedown (safe harbour) rule, which should be extended to **intermediaries involved in food e-commerce with limitations. However, rules should be introduced to raise the level of duty of care as applied to intermediaries, in which intermediaries involved in food e-commerce may be required to act expeditiously to take necessary measures when they know or should have known of violations.**
- In jurisdictions where applicable, enhanced liability mechanisms like strict liability and joint liability for intermediaries could be introduced.

Monitoring and enforcement mechanisms

- Food controls laws should cover both conventional trade and food e-commerce.
- Existing monitoring and enforcement measures should still be applicable to infringements online.
- National legal systems should provide additional regulatory options suitable to the challenges raised by cross-border e-commerce and anonymous/virtual traders: virtual checks; anonymous purchases and sampling; notification and recall mechanisms; registration of foreign online actors; notification of cross-border internet sales of food; and international cooperation for monitoring and enforcement purposes.

Food information online

- Food information laws should apply to food information provided through whatever medium, including web portals.
- Food information laws should specify that those purchasing food via e-commerce channels have the right to receive food information before the purchase is concluded and upon delivery.
- Food information laws should indicate which information requirements that are provided for general food trade apply to food e-commerce, distinguishing between prepackaged food and non-prepackaged food.
- Depending on the flexibility of each jurisdiction, the right of withdrawal and potentially less often the right to punitive damages, among other consumer protection mechanisms, may be an option to enhance consumer protection in food e-commerce.

Public authorities

- Governments should provide competent authorities with adequate tools and resources to effectively monitor internet sales of food.
- In particular, national systems of public enforcement should pay attention to: technological infrastructure and investigative capabilities adequate to internet sales; an appropriate set of sanctions;

coordination between and sharing of best practices with all national competent authorities involved; and international cooperation.

Private regulation

- It is recommended that food e-commerce regulation involves private self- and co-regulatory schemes, parallel and complementary to state regulation: e.g. codes of practice developed by private actors; voluntary agreements between food control authorities and online platforms.

1. Introduction

In recent years, the internet has become a prominent channel for selling food nationally and across borders. A study conducted by The Nielsen Company in 2015 on the future of grocery showed how 25 percent of respondents with online access in 60 countries were already buying food products online and more than 50 percent were willing to do so in the future. Needless to say, the COVID-19 outbreak gave a boost to this phenomenon in unexpected ways. Lockdowns and social distancing measures adopted by governments across the globe significantly affected consumer behaviours and consequently businesses' strategies. Restrictions imposed during the pandemic forced supermarket chains, eating places and local stores to open or expand their e-commerce channels or rely on third-party marketplaces to respond to consumers' increasing demand for online home delivery. That early reliance in food e-commerce seems now to have expanded into a lasting change in shopping and eating experiences (Duthoit, 2021), raising challenges for regulatory and enforcement authorities in their mission to protect consumers' health and interests in the new digital age.

The aim of this legal paper is to look into the policy and legal challenges of food e-commerce, and document whether and how international and national regulation have been addressing them to date. Based on available regulatory strategies, the study intends to uncover potential legal options to be included in national legislation, with a specific focus on low- and middle-income countries.

For the purposes of the study, the expressions "food e-commerce" and "internet sales of food" will be used interchangeably and refer to the activity of selling or offering for sale foods and beverages through the internet. According to our findings, the sole international instrument to date to have adopted a definition of e-commerce with specific reference to food is the Codex Alimentarius Proposed Draft Guidance on the Food Information Requirements for Prepackaged Foods to be Offered via E-Commerce (forthcoming), which will be illustrated further in this study. While the draft Codex text is still under negotiation, the current wording for the definition of food e-commerce reads as "the distribution, marketing, sale or delivery of goods and services by electronic means specifically designed for the purpose of receiving or placing of orders." Unlike the ambit of the Codex title, the scope of this legal study will focus on both prepackaged and non-prepackaged food products, extending to the online ordering and delivery of both groceries and meals. The concept of food is understood to be broad, and intended to cover all products manufactured, sold or represented with the intention or reasonable expectation to be ingested by human beings.¹ Therefore, the goal of the study is not to address products that fall outside the definition of food in national jurisdictions nor detail the particular rules that might be applicable to specific categories of substances or ingredients exchanged online (e.g. food supplements).

Food e-commerce is a relatively new phenomenon and national legislators are currently taking into consideration adapting their legal frameworks accordingly. However, the regulatory response from rule makers across the world is developing at different stages, as this legal study illustrates in Section 3.2. For instance, after decades of internet laissez-faire to promote innovation, some jurisdictions have only recently started looking into online platforms' regulation to strengthen safety and legal compliance online and tackle the increasing use of illegal content on the internet. Other countries have initiated discussions on a possible amendment to existing laws to adapt them to internet sales of food or have gone as far as to enact legislative measures (or single provisions) specific to this phenomenon. However, in the majority of

¹ The Codex Alimentarius Commission provided the following definition of food within the *General Standard for the Labelling of Prepackaged Foods* (CXS 1-1985): "Food" means any substance, whether processed, semi-processed or raw, which is intended for human consumption, and includes drinks, 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.

national legal frameworks, food e-commerce does not yet benefit from specific rules, thus falling within general food and e-commerce legislations. Similarly, international regulation is mostly lagging behind, lacking standards or guidelines tailored to food e-commerce.

As food e-commerce stands at the intersection of food safety and digital innovation, any legal reasoning on the matter should focus on general food regulation as well as on e-commerce law or internet regulation. Specifically, legal solutions to the challenges of food e-commerce require an interdisciplinary approach between various regulatory areas: food safety and quality; e-commerce transactions; online platforms and illegal content online; consumer protection; and food controls.

In this context, the present study addresses food e-commerce regulation in four Sections. Following this introduction in Section 1, Section 2 looks into the main characteristics and enforcement challenges raised by internet sales of food. It illustrates the main features, advantages and categories of food e-commerce and then outlines difficulties and challenges in terms of monitoring and enforcement. Section 3 investigates international instruments and national/regional legal frameworks relevant to food e-commerce and private regulatory strategies and checks how – and first whether – selected international bodies and countries have addressed the questions raised by food e-commerce. This comparative legal analysis focuses on various jurisdictions representative of different geographical areas and levels of development: Canada, Chile, China, European Union, Indonesia, and Nigeria. Finally, Section 4 outlines the aspects that may be considered appropriate and relevant for national laws covering food e-commerce. Regulatory solutions pertinent to internet sales of food could focus on, *inter alia*, food information/labelling standards that pay attention to online formats; a clear framework of roles and responsibilities of all actors involved (in terms of best practices, registration obligations, oversight, liabilities and risk assessment); the role of self-regulatory initiatives from online platforms; mechanisms for consumer protection and participation in ensuring food law compliance (notice-and-take-down, complaints, reviews, ratings); enforcement and coordination efforts between competent authorities, including in cross-border operations.

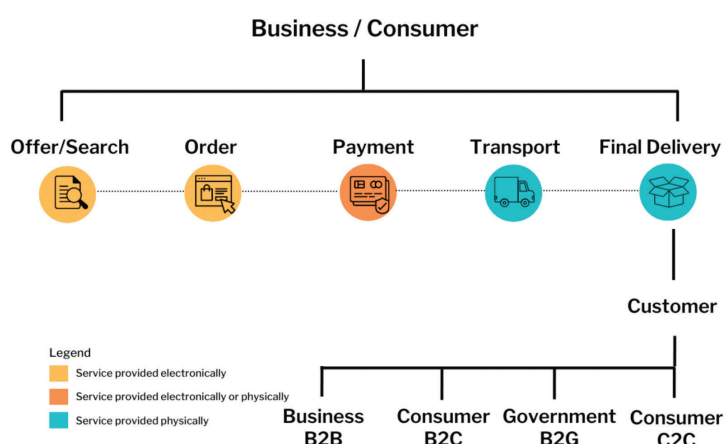
2. Food e-commerce: characteristics and challenges

2.1. Main features and benefits of food e-commerce

As previously mentioned, food e-commerce is the use of internet channels to sell or offer for sale food products, either prepackaged or non-prepackaged. Prepackaged food products are generally sold through third-party online marketplaces such as Amazon, Alibaba, eBay and Jumia or through e-commerce websites put in place by supermarket chains or local stores as an alternative to their physical shops (Carrefour, Walmart, Asda). Non-prepackaged food products for direct consumption may be sold via online delivery platforms, as a substitute to meals consumed physically in restaurants or other eating places (Deliveroo, Glovo, Just Eat, Meituan). Some businesses are online-only traders (think of the recent phenomenon of ghost kitchens² [PR Newswire, 2020]), while some others create or make use of an online venture as part of a multi-channel retail system.

As per any e-commerce transaction, food e-commerce may adopt various models – business-to-business, business-to-consumer, consumer-to-consumer or business-to-government – and is typically composed of several stages of the food chain (Zúñiga, 2019). These include the online advertising offer and searching stage; the ordering and payment stage; and the final delivery stage. Unlike e-commerce of digital content which can be provided electronically altogether, food e-commerce necessarily includes at least one “physical” element: that of transport and delivery of food products for final consumption.

Figure 1. Food e-commerce stages



Source: Author's own elaboration.

² Ghost kitchens or virtual restaurants are food business models in which the operator serves customers exclusively through online/phone ordering and delivery or pick up. They offer a service similar to that of a restaurant but without the dining space.

Internet sales of food display considerable diversity and involve various actors, some of which are distinctive features of the online world (Brice, 2018). Key players in this phenomenon include online traders, online intermediaries permitting third-party sales on their platforms, and consumers. In the context of this study, traders are natural or legal persons selling or offering for sale foods and beverages on the internet, either through their own e-commerce platform or via online intermediaries permitting third-party sales on their platform. Online intermediaries include any online platform allowing or facilitating third-party sales of foods and beverages on the internet. Thus, online platforms are understood broadly as internet-based channels allowing or facilitating the sale or offer for sale of own-brand or third-party food products. It is important to keep in mind that this terminology is not shared by all the jurisdictions analysed in this study. While these general terms will be commonly used throughout this study, each section dedicated to the regulatory analysis of selected jurisdictions will refer to the actual specific terms used within those jurisdictions.

Food e-commerce activates a range of logistics mechanisms following which the online placing of an offer results in physical delivery of a food to the final customer (including consumers). The manner in which logistics such as packing, storage, and transport are managed helps to identify certain business models and differentiate among several food e-commerce activities (Lattanzi, 2022). In this context, food e-commerce business models may vary depending on who (and how) is involved with the different stages of the food chain: production/processing, offer for sale, marketing, packing, storage, transport, and final delivery. As mentioned, online traders may sell groceries through their own e-commerce website or use online intermediaries permitting third-party sales on their platform, including social media networks (the latter model is known as f-commerce) (Zúñiga, 2019; Food Standards Agency UK, 2016). Online intermediaries may act as mere facilitators of a transaction between traders and customers or be more or lesser involved in one or more stages of the activity. Indeed, on the one hand, online intermediaries may offer a mere electronic interface to allow third parties to advertise their products and conclude the sale. In this case, traders are typically the ones dealing with packaging, storage, and final delivery. On the other hand, traders may be asked to send their inventory to specific fulfilment centres managed by online intermediaries, which then store third-party products in their own warehouses and ship them to the customers once they are ordered. In this second scenario, online intermediaries are engaged in one or more of the “physical” stages of the business such as transport, storage, and supply. Online intermediaries may also set up a “click and collect” mechanism for customers to pick up groceries at designated places, offer customer service and/or deal with returns and refunds. Consequently, online intermediaries’ contact with customers and level of control over the activity differ greatly depending on the business model they adopt. Equally, online meal delivery may follow distinct approaches. Restaurants might use online intermediaries only as an ordering interface to market their business and menus. Once the order is concluded on the platform, restaurants are the ones dealing with delivery to the final consumer. Alternatively, they might not have a transport system in place: in this case, they would rely on the ordering and delivery services supplied by the online intermediary. Both these models allow customers to browse eating places online, compare menus and prices, read reviews or find ratings from previous customers, place an order and share their opinion on their eating experience on the web portal. The difference, again, refers to who deals with distribution: either the restaurant or the online intermediary.

Food e-commerce may also follow the meal kit model (Hello Fresh, Blue Apron, Plated), which provides an online ordering service offering fresh and partially cooked food products along with a series of instructions and recipes. It is important to note that online intermediaries, regardless of the products they display for sale (groceries, meals, meal kits), do not themselves sell the food but coordinate the exchange of food products between businesses and customers (both users of the platform). In exchange, they receive payment, either directly (percentage of each sale’s commission; monthly fee) or indirectly (collection of data which they may use to generate revenues through selling targeted advertising) (Brice, 2018).

Compared to traditional trade in bricks-and-mortar stores, food e-commerce comes with clear peculiarities and advantages. The first significant trait is online order and delivery: customers – often consumers – may order their foods from a website or app with a few clicks and receive the products wherever they wish, either their home, workplace, or pick-up spots, even at chosen dates and times. Online channels may also offer more options, such as commodities that may not be available in all local stores (e.g. gluten-free, vegan, kosher or halal products), as well as an easier and more efficient shopping experience. Customers may indeed be facilitated by the format of web pages and instead of walking down the aisles of a supermarket to find what they need, may enter a search term, navigate through categories of products, or browse special offer pages (Benn *et al.*, 2015). Customers may also benefit from other customers' reviews and ratings, when available, to assess the quality of a product or reliability of a business. Moreover, food e-commerce may be an advantage in large countries, especially for communities living in remote areas, or facilitate shopping for certain categories of people (full-time employed, senior citizens, people with disabilities) (González-Vaqué, 2019). Other benefits have been reported by several businesses following a series of fact-finding missions conducted in 2017 by the Directorate-General for Health and Food Safety (DG SANTE) of the European Commission on official controls of internet sales of food. These include potential better quality and freshness due to less handling and fewer transport steps; competitive pricing due the reduction of intermediate transport steps; easier consumer identification in case of recall; larger opportunities for national businesses to widen their market and increase their sales (European Commission, 2018a).

However, as e-commerce is inextricably connected to internet penetration, these benefits are only achievable with effective access to information and communication technologies. Uneven connectivity means that people may not avail themselves of high-speed networks for a range of facilities such as government services and online shopping, including food e-commerce. One of the main obstacles to the development of food e-commerce, especially in middle- and low- income countries, is indeed the lack of digital infrastructures and broadband access. The digital divide (or exclusion) occurs at different socio-economic levels, between and within countries, between central and outlying territories, rural and urban communities, the elderly and younger generations. This digital gap activates a vicious circle in terms of technological knowledge and abilities: even when digital frameworks are eventually put in place, countries and social groups left behind are generally unaware of online services, lack the basic skills to benefit from information technologies or are unable to access them due to pricing constraints. Bridging this gap and ensuring reliable and high-quality connectivity across territories, is considered a top priority, especially as the COVID-19 health emergency has shown how remote online activities act as a pre-condition to social inclusion and economic development. Connectivity and digital literacy in rural areas, specifically, would allow effective participation of farming communities in the agrifood sector through access to information, services (including financial services), agricultural inputs and machinery, as well as market channels to sell their produce (see Section 3.2.3 on China's agenda to narrow the gap between cities and rural communities through e-commerce villages). Consequently, building an efficient food e-commerce machine through a solid access to digital technologies (including secure online payment systems) and access to adequate logistics mechanisms (i.e. packing, warehousing, shipping, transport) would, inter alia, strengthen food security across territories (European Network for Rural Development, 2017; FAO, 2021; FAO, 2020; International Telecommunication Union, 2021).

2.2. Risks and challenges of food e-commerce

Beyond the need to ensure effective e-commerce access, internet sales of food, where these are a reality, come with their own challenges and risks. Except for the difficulties in exercising withdrawal rights, these general challenges are common to all e-commerce operations.

Inability to physically examine products before purchase. First, food e-commerce challenges are linked to the absence of direct and physical contact between customers and traders, and between the customer and the product they intend to purchase (Yeo *et al.*, 2017). Buyers who choose the online route are normally unable to see, weigh, smell, measure and touch the product prior to or during purchase. Before concluding the sale, generally the only way of assessing the quality and safety of a product and the reliability of an offer is through the information made available to them on the webpage as buyers usually cannot read the actual label printed on the package and can only have limited direct contact with the trader. When products are sold through platforms managed by online intermediaries, such information is generally supplied by third-party traders which means that the operator of the online platform may not have any control over it. In these cases, food information found online may often only be as accurate as the information shared by third-party food businesses.

“Subjective” information conveyed by online reviews and rankings. Food e-commerce also raises questions as regards the reliability of external influences affecting consumers’ decision-making. Internet sales are indeed increasingly affected by informational features unique to the online world: reviews and rankings. Thus, consumer choices, including those related to food, are not only stirred by “objective” data such as ingredients, expiration dates and origin of the product but also by relatively subjective types of information mostly unknown (or known in a limited way) to physical shopping: peers’ personal opinions based – in principle – on their previous experience; and the order in which offers appear on the webpage, i.e. the relevance given to them in search results. While online reviews and rankings are embedded in consumers’ every-day shopping experience, the technological criteria, parameters and algorithmic processes behind their functioning is primarily known only by the online platform, hindering transparency and fairness on e-commerce channels (Lattanzi, forthcoming) (see Section 3.2.4 for an illustration of recent European Union rules on reviews and rankings to strengthen consumer protection online).

Limited applicability of withdrawal rights. Another issue raised by food e-commerce relates to the likely exceptions to return policies. Commodities bought through e-commerce channels typically benefit from a favourable right to withdraw from the transaction, even after delivery, precisely because consumers are unable to examine them before concluding the sale. However, withdrawal rights tend to be rather limited when applied to food items, due to safety, hygiene, and perishability reasons (see Section 3.2.4 for European Union rules on returning food products).³

Increased anonymity. Food e-commerce also brings about challenges connected to the increased anonymity on the internet. Compared to shopping experiences in physical markets, where buyers are at least aware of the business address and often the identity of the business owner or agent who sold food to them, internet sales are known for their lack of transparency. Online traders, unlike bricks-and-mortar shops, might “disappear” from the online platform they use to sell their products or might trade without identifying themselves. Depending on the functioning of the online marketplace, traders might in fact be able to post an offer by simply signing into the platform, possibly with a username (and a valid email address) and not their true (registered) identity. Anonymity is exacerbated on social media channels, where food traders are usually not required to provide accurate information about their identity (European Commission, 2018a). This causes severe difficulties in terms of food safety monitoring, hindering food traceability, recalls of unsafe food, and enforcement actions when necessary.

Increased mobility. Enforcement is also hampered by the typical “mobility” of the internet and specifically the possibility for operators to easily and rapidly enter and exit online marketplaces. In fact, infringers not only easily “hide” behind a screen making it difficult to identify the actors responsible for violations (i.e. anonymity mentioned above); they are also able to easily change the content of their webpage or

³ Examples of return and refund policies specific to food products include: [Just Eat](#); [Glovo](#); [Jumia](#).

get their business immediately back on track after removal by re-registering using a different digital identity or moving to another e-commerce channel. As mentioned in the *Recommendation of the Council on Consumer Protection in E-commerce*, published in 2016 by the Organisation for Economic Cooperation and Development (OECD), easy access to online channels also facilitates the sale of food products that have been previously recalled or prohibited from traditional markets (OECD, 2016). More generally, the growing mobility on e-commerce channels significantly increases the number of companies selling online to consumers, which are ultimately unable to vet as to the quality and reliability of the businesses and of the food the latter offer for sale.

Cross-border transactions. One additional enforcement complication is connected to the transnational nature of e-commerce. Public enforcement faces territorial restrictions as competent national authorities generally do not have any jurisdiction in foreign territories. Where non-compliant food products are sold by traders based in a third country and shipped internationally, it might be difficult for buyers to obtain remedy and for national authorities to take appropriate action and inflict sanctions. This stresses the need for international cooperation and information-sharing between national enforcement bodies. Difficulties also occur in terms of preventive monitoring initiatives against violations. As internet sales of food usually respond to individual consumption needs, cross-border online food delivery may elude regular import/export controls or might not even fall under the general import regulation. In these cases, parcels are directly dispatched to the final consumer, which means that there are no business storage/premises on the national territory. This makes it impossible to follow-up with physical inspections within the country's jurisdiction. As explained by the European Commission, for instance, parcels of food ordered over the internet from third countries normally arrive via flight carriers without a manifest (a cargo declaration) and consequently may not be subject to screening by customs authorities. Only where there is a suspicion of non-compliance is a parcel scanned or opened, with referral to food authorities if relevant. Postal sorting centres typically do not include a food authority presence or other means by which they can detect food (e.g. scanners or sniffer dogs). This is overcomplicated by intentionally misleading sender declarations. Checking all parcels is not only time consuming but mostly unfeasible, due to the huge volume of parcel arrivals (European Commission, 2018a).

Other enforcement challenges were identified by the DG SANTE in 2017 following the series of fact-finding missions mentioned in the previous section, and by the UK Food Standards Agency in a study conducted with the London School of Economic and Political Science. While these examples are specific to the jurisdictions of the European Union and the United Kingdom of Great Britain and Northern Ireland, they may offer general considerations as regards to the difficulties faced by regulatory and enforcement authorities that could apply to other legal systems: *in primis*, the lack of clear rules on food e-commerce and the ambiguity around the role of online platforms.

The rest of this section discusses in more detail the DG SANTE findings from the 2017 EU missions. The goal of the mission series was to collect data on how national competent authorities have dealt with official controls on internet sales of food. The scope of the initiative involved seven Member States and covered business-to-business, business-to-consumer and cross-border e-commerce practices, in order to identify difficulties in implementing enforcement measures.

Lack of specific rules on food e-commerce. One of the main findings focused on the legal framework available for food e-commerce: at the time of the EU missions, the majority of Member States that were visited had no specific national legislation in place for this type of sale and applied existing EU food law and complementary national laws to conduct controls on internet sales of food. National legislation, where in place, provided additional powers to competent bodies to carry out official controls and to request relevant information in the course of investigations from other entities. Regardless of the existence of a legal framework, though, most competent authorities had prepared guidelines or organized trainings to

assist control agents in their monitoring activities concerning food e-commerce. Guidance documents also provided advice to consumers when shopping online and to businesses engaged in food e-commerce, especially on registration requirements, on nutrition and health claims, and on differences between consumer-to-consumer and business-to-consumer sales (distinctions were based on criteria such as volume/value of internet sales, frequency and continuity of e-commerce activities, degree of organisation).

Disparities and lack of clarity as regards enforcement scope, powers, and skills. Turning to the responsibilities of competent authorities, the findings showed how competence for food e-commerce controls usually fell under the remit of the authorities responsible for general food controls. However, specific aspects required coordination with bodies dealing with other regulatory areas (medicines, advertising). The Member States visited differed in terms of skills and powers. Some had well-advanced teams either covering specialized areas (e.g. food supplements) or focusing on a broader spectrum (food as well as cosmetics and tobacco for instance). The findings also highlighted the absence of a common and uniform approach across the European Union in terms of the scope of controls. Various criteria were in fact used to determine whether a specific website is destined to national consumers and should therefore be subject to national official controls. These criteria included offers in the national official language, prices in national currency, registered office of the responsible legal entity located in the country, a physical address on the website, even the absence of a disclaimer that the products bought cannot be delivered to an address in the country. National disparities could be found in terms of procedural mechanisms and powers too (e.g. sampling and analysis, possession of an official credit card to conduct controls for instance). In particular, at the time of the survey, most national frameworks did not provide a legal basis to conduct official anonymous purchases (i.e. mystery shopping) for sampling and control purposes, which resulted in differences in national policies as to the possibility and manner to assume fake identities to monitor e-commerce channels (this has since changed at EU level with *EU Regulation 2017/625 (Official Controls Regulation)* – see Section 3.2.4; on this topic, see also China in Section 3.2.3). It is important to stress that mystery shopping not only requires a legal framework allowing it but also an adequate toolbox to perform it, such as software and payment methods that prevent identification of the (public) purchaser.

Challenges linked to registration and record of food e-commerce businesses. The European Commission also illustrated in the DG SANTE report (European Commission, 2018a), the obstacles that competent authorities (CAs) of the Member States (MS) encounter when it comes to control compliance with registration requirements. These obstacles include:

- i. **The lack of registration procedures adjusted to internet sales:** “in most cases the FBO registration forms do not explicitly take into consideration the online dimension, nor is that information considered for the risk rating and for determining the type or the frequency of controls by local CAs. Where the sale of food via the Internet is part of an existing business then this activity is not registered separately but is considered as part of the existing registration. In some cases, registration forms contain a series of questions on the type of the activity, the type of processing involved, the type of products sold as well as whether or not there are online sales. Another approach used is to ask and collect information on Internet sales activity during the on-spot inspections in the different establishments” (p. 11).
- ii. **The volatility and mobility of e-commerce businesses:** “the CAs consider it difficult to develop and maintain an up-to-date list of online food sellers due to the volatility of such online businesses and the simplicity with which such businesses can establish, re-establish themselves or exit the online market. It is relatively easy to start an online food business, without necessarily being aware of all the rules that apply and the responsibilities of the operator. FBOs are required to inform the relevant CAs of any significant changes to, or termination of their activities. CAs mentioned that this is not always followed by FBOs in relation to their online activity” (p. 12).

iii. The difficulty in fully classifying and defining the legal status of new agents of food e-commerce such as online platforms as well as informal and home-based businesses: “online platforms that act solely as third party service providers are not considered FBOs operating online, since they never own or/and physically handle the product. ... In some of the MS visited parcel delivery services including postal services are not registered since the parcel delivery operators do not usually offer to transport goods requiring chilling or perishable goods and are therefore not classified by the CAs as FBOs. Some MS are reflecting on whether certain operators of food delivery services to the final consumers should be considered FBOs (with an added level of complexity arising when such deliverers are deemed to be self-employed). One MS is reviewing the content of its existing rules concerning the need to register FBOs involved in online sales which operate from their private residence and how to ensure that they are subject to official controls ... The task falls onto the CAs to identify the FBOs for which they are responsible and those engaged in online trading activity as well as subjecting them to official control. This poses difficulties as the business entities might not mention, at the time of registration, that they sell food, where that is not their main activity, or the fact that they sell online (online sales might start at a later stage)” (pp. 12-13).

These challenges in terms of registration requirements for food e-commerce businesses translate into ineffective official controls performed by national authorities, as they are unable to identify and keep track of the actors they should target. Unregistered operators usually become known to the authorities only through advertising; previous registration with tax authorities (and only if they mention the food dimension of their activity); customer complaints; and their involvement in different cases or investigations already subject to the attention of the authorities.

According to DG SANTE, the scope and frequency of controls on internet sales of food should at least equal those performed over physical retailers. At the time of the fact-finding missions, however, the scope and controls were rather limited due to the novelty of the matter and the lack of resources, tools and training dedicated to food e-commerce. These failures, along with the challenges described above, explain why e-commerce is considered a risk to food safety. In particular, a high level of non-compliance was evidenced by a series of surveys carried out in the United Kingdom by local Trading Standards offices in 2015 (Food Standards Agency UK, 2016a), by the first EU coordinated control plan on food offered via the internet in 2017 (European Commission, 2017a) and by the German Federal Office of Consumer Protection and Food Safety (Bundesamt für Verbraucherschutz und Lebensmittelsicherheit [BVL]) in 2014.

The DG SANTE overview report also stressed the importance of setting up cooperation mechanisms and data sharing agreements with other public bodies (e.g. consumer protection authorities, tax authorities, medicine agencies, police authorities, customs, social security and justice services), private entities (e.g. banks, payment service providers, online selling platforms) as well as other Member States, especially as regards non-compliance originating from a third country. In particular, cooperation with online platforms (starting from preferential contact points for example) is essential to overcome the challenge to take effective action against infringers, including activating measures such as obscuring their online offers or cancelling listings; disabling or suspending their access to the platform; and limiting their account privileges.

Similar but additional challenges were evidenced by the Food Standards Agency UK and the London School of Economic and Political Science in a joint study exploring measures ensuring safety of food sold online in the UK. More particularly, this study stressed the: i) urgency to define the legal status and responsibilities of online platform operators; ii) importance of delivering regulation and advice to online traders; iii) need to prevent non-compliant vendors from selling food online (through stronger cooperation between platforms and competent authorities for instance); iv) importance to use hygiene ratings to identify compliant operators; v) need to resolve the ambiguity regarding the legal status of domestic food traders; and vi) urgency to develop common standards for the provision of food allergen information in online takeaway platforms.

While some of the data reported in this section focused on specific jurisdictions (European Union, United Kingdom) the findings provide an interesting overview of the challenges consumers and public authorities face as regards internet sales of food. The features described above call for the need for regulators and enforcement bodies to adapt to food e-commerce. This is true especially as online platforms have developed into primary players of food sales and distribution, in most cases without a clear definition of their roles and responsibilities. Adjusting to the regulatory needs of food e-commerce also calls for the need to initiate or improve an active collection of data, to strengthen the understanding around internet connectivity, the amount of food products exchanged domestically and across borders, the volume and types of infringements, the tools needed to monitor e-commerce channels, and the measures that may be taken by public bodies and private actors.

3. Regulatory frameworks covering food e-commerce

3.1. International legal framework

The regulatory and enforcement challenges arising from food e-commerce require international cooperation and guidance. This is all the more true considering the inherent cross-border and global nature of e-commerce. This kind of guidance needs to address – and possibly combine – the two main aspects encompassing food e-commerce: the elements connected to the food supply chain, including food safety and quality requirements; and the features linked to distance/internet sales.

The following subsections outline the various international instruments and initiatives related to food e-commerce:

- 3.1.1. Codex Alimentarius texts.
- 3.1.2. The work of the World Trade Organization (WTO).
- 3.1.3. The United Nations Commission on International Trade Law (UNCITRAL): the Model Law on Electronic Commerce and the United Nations Convention on Contracts for the International Sale of Goods.
- 3.1.4. The United Nations Conference on Trade and Development (UNCTAD): the United Nations Guidelines on Consumer Protection.
- 3.1.5. The Organisation for Economic Cooperation and Development (OECD): the Consumer Protection in E-commerce Recommendation.
- 3.1.6. International principles of intermediary liability.

While most of these instruments do not focus on food e-commerce *per se* – with a recent and rather significant exception from the Codex Alimentarius – they do provide clarifications on various aspects of internet sales of food, offering guidance on how different elements of this new phenomenon may be addressed in national regulation.

3.1.1. Codex Alimentarius texts

Since 1963, the Codex Alimentarius Commission, jointly established by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO), has elaborated a collection of standards, recommendations, guidelines, and codes of practice (i.e. voluntary texts) in the fields of food quality, safety, and trade.⁴ As one of the main international frameworks providing solutions to protect (food) consumer health and promote fair practices in food trade, Codex is well placed to initiate and coordinate efforts towards defining and harmonizing standards on the topic of food e-commerce.

⁴ All Codex texts may be found at: www.fao.org/fao-who-codexalimentarius/codex-texts.

Regulatory areas relevant to food e-commerce include food labelling, food controls, and cross-border food trade.

Food labelling. Since 2019, the Codex Committee on Food Labelling (CCFL) has been working on *Proposed Draft Guidelines on Internet Sales/E-commerce*, and more specifically within that remit on a *Proposed Draft Guidance on the Food Information Requirements for Prepackaged Foods to be Offered via E-Commerce* (hereinafter, Proposed Draft Guidance).⁵ This initiative responds to the “global growth and ever-increasing diversification of e-commerce” (FAO and WHO, 2019, para. 89) and bears witness to the primary role of labelling regulation when it comes to addressing the challenges of food e-commerce. The draft text is planned as a standalone text alongside the already established *General Standard for the Labelling of Prepackaged Foods (CXS 1-1985)*, also referred to as GSLPF. As anticipated in Section 1 of this legal study, the proposed Codex guidance covers prepackaged food products exchanged through e-commerce platforms directed to consumers – thus, it would not apply to non-prepackaged products, including meals offered for sale on delivery platforms. The purpose of the proposed guidance is to clarify the information requirements that should be displayed on the product information webpage (e-page) prior to the point of e-commerce sale, that is, the online offer available at “the moment when consumers decide to make the purchasing order regardless of making any payment”. The e-page would include mobile applications (FAO and WHO, 2021, para. 106). The Codex Proposed Draft Guidance is, so far, the sole international instrument providing a definition of e-commerce with a specific reference to food.⁶ As mentioned in the introduction, the definition of e-commerce for food is “the distribution, marketing, sale or delivery of goods and services by electronic means by methods specifically designed for the purpose of receiving or placing orders” (FAO and WHO, 2023, p. 7). According to the draft, food information means “the information about a prepackaged food that is subject of a Codex text” (FAO and WHO, 2023, p. 7). Therefore, the CCFL is in line with the latest approach on food regulation, shifting from mere labelling to a comprehensive use of the term “food information”, which encompasses any means through which information on a food product is conveyed to buyers (including consumers), that is any label, advertising, accompanying material, and communication made available before, during and after purchase as regards a particular food product.

As a general principle, the Proposed Draft Guidance provides that “The general principles in Section 3 of the GSLPF (CXS 1-1985) are applicable to food information shown on the product information e-page of the prepackaged food that is being offered for sale” (FAO and WHO, 2023, p. 7). This reference to Section 3 of the GSLPF, recalls that prepackaged food shall not be described or presented on any label in a false, misleading or deceptive manner or in a way that would likely create an erroneous or confusing impression regarding its character and nature. In addition, the Proposed Draft Guidance clarifies that any information required to be provided on the label of a prepackaged food should also be made available on the digital page of the same product offered for sale via e-commerce, except to the extent otherwise expressly provided in the guidance itself or an individual Codex standard. This includes the information indicated in Section 4 and Section 5 of the GSLPF (i.e. the name of the food; list of ingredients; net contents and drained weight; name and address of business operators; country of origin; storage instructions; instructions for use; quantitative ingredients declaration; and irradiated foods) except for the information required by Section 4.6 (lot identification) and Section 4.7.1 (date marking). The latter exception should be of a practical nature considering that e-pages do not typically show the actual product offered for sale but a digital image of a sample of the same genre.⁷

Interestingly, the Proposed Draft Guidance calls for consumer enhanced awareness by affirming that the product information e-page should include a statement aimed at reminding customers that they should check the information on the physical label before consumption. As for optional food information details

⁵ The launch of new efforts on food e-commerce, and precisely on the adjustment of Codex Food Labelling texts, was agreed upon during the Forty-fifth Session of the Codex Committee on Food Labelling of 13-17 May 2019 and approved by the Forty-second Session of the Codex Alimentarius Commission of 8-12 July 2019.

⁶ This Codex Alimentarius text is still being drafted, but due to its importance, the latest draft is discussed in this study (see FAO and WHO, 2023).

⁷ See similar provisions within EU law: van der Veer, 2017; Lattanzi, 2022.

to be included at the point of e-commerce sale, the Proposed Draft Guidance makes explicit and full reference to Section 7 of the GSLPF on optional labelling. Finally, the Proposed Draft Guidance provides for general principles on the presentation and accessibility of food information available on online platforms, by indicating that the statements displayed on the product information e-page should be clear, prominent and readily legible to an average consumer, which is a consumer operating “under normal settings and conditions of use of such platforms” (FAO and WHO, 2023, p. 8). Online offers for sale should also be written in a language “suitable to the consumer in the country in which the food is marketed and to which it may be delivered” (FAO and WHO, 2023, p. 8). Thus, product information e-pages should be available in the official language(s) of the country where products are sold.

On a final note, in its Forty-Forth Session of October 2017, the CCFL identified innovation and the use of technology as an item for future consideration (FAO and WHO, 2018, para. 58). It was later clarified that the topic explored “when technology may be used in addition to, or as an alternative to, a physical label to provide food information”. While it was agreed that this work would differ from that on e-commerce “in that the product was physically present” (FAO and WHO, 2021, para. 138), it is closely linked to it and **would potentially** provide further input on how food information may be made available through electronic or other technological means (websites, QR codes) to e-commerce consumers once the food is finally and physically delivered to them.

Food controls. During the discussions on the Proposed Draft Guidance, the CCFL also suggested that questions pertaining to controls over cross-border e-commerce transactions should be primarily referred to the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS) for further consideration, as these mostly reflected issues of import and export, not food labelling. Food safety and quality controls over e-commerce channels – whether with respect to domestic or cross-border operations – are indeed an essential area to be taken into consideration when regulating internet sales of food products.

Food controls are the focus of several Codex texts. While none of them address enforcement challenges specific to internet sales, they do lay down a useful framework that could assist national regulators in building effective and resilient inspection, certification and monitoring systems against infringements online. Starting with the *Principles and Guidelines for National Food Control Systems (CXG 82-2013)*, this text applies to the production, packing, storage, transport, handling and sale of foods within national borders and intends to assist national authorities in the development of an efficient food control framework (Section 1). According to these CXG 82-2013 guidelines, national control systems should first and foremost guarantee consumer protection, especially consumer health (Principle 1) and cover the whole food chain, from primary production to consumption (Principle 2). Even if not expressly mentioned, this should arguably include intermediary steps such as marketing, sale and transport/delivery, even through electronic means. The control chain should be transparent at all stages (Principle 3) and provide a clear definition and allocation of roles and responsibilities for all participants, i.e. FBOs, national authorities, consumers, and scientific experts (Principle 4, Section 4.1, para. 38). The recent digital developments affecting the food chain and the emergence of new actors should therefore call for a rethinking, or at least an integration, of existing responsibility legal models. These should clearly outline how protagonists of food e-commerce should be defined and which obligations should apply to them. According to CXG 82-2013, other principles guiding national food controls systems should be impartiality, consistency (Principle 5) and risk-based, science-based and evidence-based decision-making (Principle 6). As for the principle focusing on effective coordination and cooperation between competent authorities (Principle 7, Section 4, para. 27), this may be of the utmost importance as food e-commerce governance may lie within various regulatory areas and fall within the competence of more than one national authority (e.g. food safety, cybercrime, consumer protection). National food control systems should also encompass the core elements of prevention, intervention and response (Principle 8). Principle 8 is functional to a preventive approach to food safety and quality, aimed at avoiding – rather

than following up on – any action likely to be injurious or fraudulent. Because enforcing against food law violations performed on e-commerce channels comes with significant obstacles (see Section 2.2 of this legal study), preventive measures may be pivotal when building national food control systems adapted to the new digital world. At a post-violation stage, meaning that once food is found injurious to health or otherwise non-compliant with applicable rules, traceability/product tracing systems should be included in a national food control system to provide “for the timely identification of the sources for emergencies and allowing effective recall of affected products” (Section 4.2, para. 61). These systems are seen as inherent pillars of a pro-active control system (Section 4.1, para. 36) and are specifically addressed within the *Principles for Traceability/Product Tracing as a Tool Within a Food Inspection and Certification System (CXG 60-2006)*. Further noted in the *CXG 82-2013*, national competent authorities should maintain arrangements with other countries (Section 4, para. 26), which might prove valuable to address infringements related to food sourced abroad and traded through online platforms. “Legislation may also include provisions, as appropriate, for the registration of establishments, establishment approval, licensing or registration of traders, equipment design approval, penalties in the event of non-compliance and charging of fees or levies” (Section 4.1, para. 40). The rise of new online actors poses the question as to whether it might be appropriate to integrate the *Principles and Guidelines for National Food Control Systems* with the explicit statement that food control systems should include registration and authorization mechanisms adjusted to online platforms. Because these are often mere intermediaries not touching nor handling the food, they might not fall within the definition of trader and thus elude existing monitoring systems.

Cross-border food trade.

As explicitly stated in Section 1 of the *CXG 82-2013*, these guidelines should be used in conjunction with a variety of Codex texts pertaining to cross-border transactions, such as the *Principles for Food Import and Export Inspection and Certification (CXG 20-1995)*, the *Guidelines for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems (CXG 26-1997)*, the *Guidelines for Food Import Control Systems (CXG 47-2003)* and the *Guidelines for the Exchange of Information between Countries on Rejections of Imported Foods (CXG 25-1997)*. In fact, while food controls that focus on the national food supply chain are crucial, today’s food products are increasingly sourced from third countries, produced/sold by operators based outside of national borders, and made available to consumers through traditional channels (local stores, supermarkets) as well as online platforms. Therefore, national monitoring mechanisms should pay attention to the challenges of export/import control systems and be adjusted to the needs of today’s globalized digital trade routes. The first three Codex texts mentioned above (*CXG 20-1995*, *CXG 26-1997*, *CXG 47-2003*) make a brief reference to the possibility that food controls might include inspections online as they clarify that certification is the procedure by which official bodies guarantee that foods or food control systems conform to applicable requirements. Certification of food may be based on a range of inspection activities “which may include continuous on-line inspection, auditing of quality assurance systems, and examination of finished products” (*CXG 26-1997*, Section 2). As an overall observation, however, these frameworks seem tailored to the phenomenon of food imported through traditional means and subject to well-established inspection procedures followed by competent authorities (at customs for instance). The question arises as to how these procedures translate to food e-commerce controls, for instance when small/single units of food are bought online and shipped from a country to another for self-consumption?

As the common cross-border nature of food e-commerce requires strong cooperation between national competent authorities, attention should also be paid to the principles laid down in the *Principles and Guidelines for the Exchange of Information between Importing and Exporting Countries to support trade in food (CXG 89-2016)*, the *Principles and Guidelines for the Exchange of Information in Food Safety Emergency Situations (CXG 19-1995)*; and the *Guidelines for the Exchange of Information between Countries on Rejections of Imported Food (CXG 25-1997)*. Considering the specific enforcement challenges rising from food e-commerce,

especially as regards transnational trade (as illustrated in Section 2.2 of this study), it might be advisable to consider Codex guidelines dedicated to this issue, conceivably as supplementary to an already established general standard, as seen with the recent *Proposed Draft Guidance*.

Moreover, considering the frequent international implications inherent to food e-commerce, it is worth reminding that the *Code of Ethics for International Trade in Food including Concessional and Food Aid Transactions (CXC 20-1979)* outlines general principles towards safety and fairness in international food trade (Article 1). More specifically, no food should be involved in international trade where it is harmful, unfit for human consumption, adulterated, mislabelled or presented in a manner that is false, misleading or deceptive, or has an expiration date which does not leave sufficient time for distribution in the importing country (Article 3).

3.1.2. The work of the World Trade Organization

Discussions of the Codex Committee on Food Labelling focused, *inter alia*, on finding an appropriate definition of e-commerce. Proposals were made to use the current WTO definition of the term as it was already in use and generally understood. Although later CCFL works centre the meaning of e-commerce on the specific item of food, it seems appropriate to briefly refer to the efforts conducted by the WTO on this matter.

Following the 1998 *Declaration on Global Economic Commerce*, the *Work Programme on Electronic Commerce* (hereinafter, Work Programme) was adopted by the WTO General Council in September 1998 with the goal of exploring the relationship between existing WTO agreements and e-commerce and examining all aspects of e-commerce connected to trade (WTO, 1998a; WTO, 1998b). The Work Programme lays down a broad, seemingly all-encompassing definition of e-commerce, by stating that it includes “the production, distribution, marketing, sale or delivery of goods and services by electronic means” (p. 1). The Declaration also agreed on a moratorium on customs duties on electronic transmissions, as in a non-binding undertaking not to impose customs duties on products ordered and delivered electronically. This moratorium has been extended several times, most recently during the WTO’s Twelfth Ministerial Conference (MC12), which took place from 12 to 17 June 2022.

One of the four WTO bodies instructed by the Work Programme to explore the relationship between existing WTO agreements and e-commerce is the Committee on Trade and Development. The Committee was asked to analyse the effects of electronic commerce on the trade and economic prospects of developing countries; the challenges to the participation of developing countries in electronic commerce; the role of improved access to infrastructure and transfer of technology; the use of information technology in the integration of developing countries in the multilateral trading system; the implications for developing countries of the possible impact of e-commerce on the traditional means of distribution of physical goods; and the financial implications of electronic commerce for developing countries. Developing countries may especially benefit from e-commerce, as the latter might help them “overcome some of their traditional drawbacks in trade, such as distance to markets and lack of information about market opportunities and available supply” (WTO, 1998c, para. 10). The Committee underlined the state of regulation in developing countries – as it stood in 1998 – as one of the aspects impeding effective growth through electronic commerce. Governments may indeed influence their legal environment so as to respond to and give clarity to the questions arising from electronic trade. “Every country that wishes to participate actively in electronic commerce needs to ensure that domestic laws and regulations are conducive to the use of electronic means for trade-related communication and delivery, or at least that domestic laws and regulations do not constitute unnecessary impediments to the use of modern information technology in trade” (WTO, 1998c, para. 48). At the time, however, the Committee highlighted how “developing countries have so far made few legislative reforms in order to accommodate the requirements of electronic commerce” (WTO, 1998c, para. 48).

As a final, but not less important consideration on food and trade, the sanitary and phytosanitary (SPS) obligations and rules on technical barriers to trade (TBT), laid down under the WTO umbrella, apply to food products exchanged internationally, even when this exchange is conducted through e-commerce channels. More specifically, under the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures* and the *WTO Agreement on Technical Barriers to Trade*, governments are allowed to act on trade to guarantee human, animal or plant health or introduce technical requirements on labelling and quality on the condition that potential restrictions are not introduced for purposes of discrimination or protectionism and do not result in unjustified barriers to trade. This means that cross-border internet sales of food will typically have to comply with science-based SPS and technical standards put in place by third countries to protect, among others, human health. However, as mentioned, attention should be paid to enforcement as food e-commerce transactions are often concluded for self-consumption, thus avoiding controls at national borders. Controlling agencies in importing countries may indeed not be equipped to inspect “large volumes of small packages entering, for example, through postal or courier services” and verify compliance with existing health and safety norms (WTO, 2020, para. 5).

3.1.3. The United Nations Commission on International Trade Law: the Model Law on Electronic Commerce and the United Nations Convention on Contracts for the International Sale of Goods

One of the initiatives cited by the WTO Committee on Trade and Development to assist countries in setting up a legislative framework adequate to e-commerce is the *Model Law on Electronic Commerce* produced by the United Nations Commission on International Trade Law (UNCITRAL), the UN body competent for promoting the harmonization and unification of international trade law. Adopted in 1996, the Model Law provides a set of principles which can be used by national legislators to enact or improve regulation on e-commerce and remove legal obstacles applicable to electronic transactions. Based on the three pillars of non-discrimination against the use of electronic means, functional equivalence and technology neutrality, it provides for the equal treatment of electronic and paper-based information as well as the legal recognition of electronic transactions (Articles 5, 6-8). The Model Law also establishes rules for the formation and validity of contracts, when concluded by electronic means (Article 11). However, it does not define what is “electronic commerce”, though a definition of the associated term “electronic data interchange” is provided (Article 2). It should be pointed out that the provisions surrounding the electronic data interchange and other relevant terms as such under the Model Law do not touch on how e-commerce interacts with consumer protection or product safety directly, though they might be related to these concepts one way or another.

Another international instrument, the *United Nations Convention on Contracts for the International Sale of Goods*, adopted by UNCITRAL in 1980, covers contracts of sale of goods between parties whose places of business are in different Contracting States of the Convention (or if the rules of private international law lead to the application of the law of a Contracting State) (Article 1 (1)). This would include sales of food products concluded on an online platform when the trader and the buyer are not based in the same country (i.e. cross-border food e-commerce). However, it should be noted that the Convention does not apply to sales “of goods bought for personal, family or household use” (Article 2 (a)), which is typically the purpose behind most internet sales of food by consumers.⁸

⁸ Interesting to note that the UNIDROIT Principles of International Commercial Contracts, produced by the International Institute for the Unification of Private Law (UNIDROIT) in 1994 (revised 2016) also don't seem to be applicable to a large part of food e-commerce transactions as their scope only covers “commercial contracts”, to be understood as excluding “consumer transactions” (Comments to the Preamble, para. 2).

3.1.4. The United Nations Conference on Trade and Development (UNCTAD): the United Nations Guidelines on Consumer Protection

The *United Nations Guidelines for Consumer Protection* (UNGCP) are a collection of principles for setting out the main features of an effective consumer protection legislation and enforcement system. The United Nations Conference on Trade and Development (UNCTAD) is mandated to promote the UNGCP and create awareness among Member States, businesses and civil society on how each of them can promote consumer protection in the provision of public and private goods and services (UNGCP, 2024).

As a general principle, the UNGCP reminds that consumer protection includes protection of consumers' health and safety as well as their economic interests (Section III, paras. 5(c), 5(d)) and that the level of protection for consumers using electronic commerce should be at least equivalent to that afforded to consumers using other channels (Section III, para. 5(j)).

In their efforts towards effective consumer protection regulation and policies, Member States should encourage "clear and timely information to enable consumers to contact businesses easily, and to enable regulatory and law enforcement authorities to identify and locate them", including information on their website and government registration or license numbers (Section V, para. 14(b)). This should be of the utmost importance when products are sold through the use of e-commerce channels as the virtuality inherent to internet sales make online traders less tangible and more difficult to locate than traditional stores. Clear information and transparency should also be guaranteed as regards the goods (which is essential in food e-commerce considering the inability of consumers to see, smell, weigh and check the product before buying it), the sale's terms and conditions (Section V, para. 14(c)) and procedures for cancellation, return, and refund (Section V, para. 14 (e)).

Regulators should also adopt or encourage suitable measures towards the physical safety of the product (Section V, para. B). In particular, "appropriate policies should ensure that if manufacturers or distributors become aware of unforeseen hazards after products are placed on the market, they should notify the relevant authorities and, as appropriate, the public without delay. Member States should also consider ways of ensuring that consumers are properly informed of such hazards" (Section V, para. 18). Turning to food e-commerce, the question arises as to whether online intermediaries permitting third party sales are considered distributors of food in any manner and thus subject to potential notification requirements. The same question arises for possible recall obligations of unsafe products (Section V, para. 19). According to the UNGCP, policies on food safety and food controls, specifically, should follow the standards established by the *Codex Alimentarius*, or in their absence, other generally accepted international food standards (Section V, para. 70). The UNGCP also provides that consumer organizations should be encouraged by Member States to monitor adverse practices, such as the adulteration of foods, false or misleading claims in marketing, and service frauds (Section V, para. 21).

National legal options related to food e-commerce may also rely on the guidance of the UNGCP on businesses' self-regulation and pro-active initiatives. Indeed, according to the UNGCP, national regulation should encourage the "formulation and implementation by businesses, in cooperation with consumer organizations, of codes of marketing and other business practices to ensure adequate consumer protection. Voluntary agreements may also be established jointly by businesses, consumer organizations and other interested parties. These codes should receive adequate publicity" (Section V, para. 31). This feature reflects current approaches to corporate governance relying on businesses' voluntary action and auto-regulation mechanisms to address illegal content online as well as to promote consumer protection (UNCTAD, 2017; Amina Lattanzi, 2022). A self-governance approach by online platforms engaged in or facilitating e-commerce

activities, for instance, would translate into national policies nudging platforms towards best consumer protection practices and prevention tools without the need to introduce heavy changes to legislation (the topic of private regulation as a regulatory option to address food e-commerce is discussed in Section 4 of this legal study).

More specifically on the emergence of digital trade, the current (2016) version of the UNGCP responds, *inter alia*, to the challenges of consumer protection raised by e-commerce: in fact, the guidelines make explicit reference to the equity of treatment between consumer protection on e-commerce channels and other forms of trade (Section V, para. 63) and encourage national regulators to “review existing consumer protection policies to accommodate the special features of electronic commerce and ensure that consumers and businesses are informed and aware of their rights and obligations in the digital marketplace” (Section V, para. 64).

Finally, as regards regulation on food e-commerce enforcement mechanisms, national lawmakers may take into consideration the principles laid down in Section VI of the UNGCP on international cooperation against fraudulent or deceptive cross-border commercial practices. Protecting consumers operating online may benefit from solid mechanisms for the exchange of information, common testing procedures, as well as collaboration “regarding products which have been banned, withdrawn or severely restricted in order to enable other importing countries to protect themselves adequately against the harmful effects of such products” (Section VI, para. 80).

3.1.5. The Organisation for Economic Cooperation and Development: the Recommendation on Consumer Protection in E-commerce

E-commerce is defined by OECD as “the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing orders”, so e-commerce is a type of commercial transaction, which is “determined by the ordering method rather than the characteristics of the product purchased, the parties involved, the mode of payment or the delivery Channel” (OECD, 2019, p. 14). The OECD’s *Recommendation Concerning Guidelines for Consumer Protection in the Context of Electronic Commerce* is included in the standards on electronic commerce that the UNGCP are advising countries to follow for the revision of relevant policies and regulations. Motioned by the OECD in 1999, this Recommendation is designed to help ensure that consumers are equally protected when shopping online and offline. The principles put forward by the Recommendation include transparent and effective consumer protection; accessible information on the goods, the business, and the transaction involved (including terms of delivery and instructions for use); and consumer awareness on their rights and remedies.

The Recommendation was revised and replaced by the OECD Council in 2016: the revised *Recommendation on Consumer Protection in E-commerce* “addresses new and emerging trends and challenges faced by consumers in today’s dynamic e-commerce marketplace” (p. 3). These new developments refer to non-monetary transactions; digital content products; active consumers; mobile devices; privacy and security risk; payment protection; and product safety. In particular, the 2016 Recommendation recognizes the variety of e-commerce business models that have emerged in recent years and the active role that consumers have taken up in product promotion. Thus, a new provision has been added to guarantee truthful, substantial, and transparent consumer endorsements in advertising and marketing: “any material connection between businesses and online endorsers, which might affect the weight or credibility that consumers give to an endorsement, should be clearly and conspicuously disclosed” (para. 17). As for the growing use of mobile devices to conclude e-commerce transactions and the technical challenges they raise (e.g. small screens), the 2016 Recommendation stresses that “businesses should take into account the technological limitations

or special characteristics of a device or platform, while providing all necessary information” (para. 27). Furthermore, the 2016 Recommendations update several provisions, such as the one focusing on the role of consumer protection authorities and the need to enhance their ability to protect consumers in e-commerce settings, as well as to exchange information and cooperate in cross-border matters. In particular, governments and stakeholders are asked to work together to increase consumers’ digital competence as well as businesses’ awareness on the consumer protection framework that applies to their online activities, at domestic and cross-border levels (para. 50, 51).

As for enforcement, the 2016 Recommendation highlights the importance of providing national authorities with effective powers and technical expertise to investigate and take action against infringements online (para. 53 (iii)). This includes effective mechanisms against both domestic businesses engaged in fraudulent and deceptive commercial practices against foreign consumers, as well as foreign businesses engaged in fraudulent and deceptive commercial practices against domestic consumers (para. 53 (iv)). Finally, appreciating the enhanced risks of anonymity in e-commerce channels, it is stated that “businesses should not exploit the special characteristics of e-commerce to hide their true identity or location, or to avoid compliance with consumer protection standards and/or enforcement mechanisms” (para. 21).

3.1.6. International principles of intermediary liability

In recent years, there have been comments from international bodies about the liability regime to apply to online platforms. These comments have mostly been made as regards free speech online but may prove analogous argumentation for the role of intermediaries in internet sales of food.

For instance, the *Joint Declaration on Freedom of Expression and the Internet*, adopted in June 2011 by the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and other parties, opted for the principle of platforms’ safe harbour: “No one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so (‘mere conduit principle’). [...] At a minimum, intermediaries should not be required to monitor user-generated content and should not be subject to extrajudicial content takedown rules which fail to provide sufficient protection for freedom of expression (which is the case with many of the ‘notice and takedown’ rules currently being applied)” (Principle 2).

In the same year, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression declared that “censorship measures should never be delegated to a private entity, and that no one should be held liable for content on the Internet of which they are not the author. Indeed, no State should use or force intermediaries to undertake censorship on its behalf” (La Rue, 2011, para. 43).

In 2020, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, and the Organization of American States Special Rapporteur on Freedom of Expression made a new *Joint Declaration on Freedom of Expression and Elections in the Digital Age*, stating that “online intermediaries should not be held liable for dis-, mis- or mal-information that has been disseminated over their platforms unless they specifically intervene in that content or fail to implement a legally binding order to remove that content” (Recommendation 1 (c)(iv)).

Interestingly, while the 2022 *Joint Declaration on Freedom of Expression and Gender Justice* does not address intermediary liability as regards gender equality, it does call for a more proactive approach to be taken by online platforms: “Internet intermediaries should be particularly mindful of the way that their

services, automated or algorithmic processes and business practices to increase user engagement, target advertising or engage in profiling may amplify gender stereotypes, bias, misogyny and gender-based violence. Companies should ensure that their content moderation and curation policies and practices do not discriminate on the basis of gender or other protected attributes” (Recommendation 1(e)); “States, internet intermediaries and civil society organisations should encourage and proactively support the digital and information literacy of women and girls” (Recommendation 2(b)); “Internet intermediaries should design processes and outcomes that respect and uphold women’s human rights, using diverse and inclusive teams to create tools, technology and content” (Recommendation 5(b)); “Internet intermediaries should make their policies on non-discrimination, gender equality and safety from online violence publicly available, and explain their practices, decision-making processes, the operation and impact of automated processes and algorithms they use, their appeals processes, and their remedies for abuse, bias or discrimination in non-technical terms and make them easily accessible to all users in local languages” (Recommendation 5(c)).

3.2. Legal frameworks at national/regional level

National law relevant to internet sales of food typically stem from different regulatory areas such as food safety and quality, food controls, consumer protection, and internet law. While national instruments may not focus on food e-commerce per se, they do provide an overview of available legal strategies at national and regional level to properly address this phenomenon from a regulatory standpoint. Specifically, analysing regulatory options from selected jurisdictions – Canada, Chile, China, European Union, Indonesia and Nigeria – will help to understand how legal tools may be used to ensure food safety and quality on e-commerce channels and guarantee effective protection of online consumers. These countries, and the European Union, were chosen to have a balanced representation of different regions, languages and legal traditions.

3.2.1. Canada (federal)

Food e-commerce context

Before the outbreak of the COVID-19 pandemic, internet sales of food in Canada were estimated at circa 1.7 percent of the total volume of food retail (Agri-Food Analytics Lab, 2020a). Analogously, online retail of groceries only accounted for approximately 3 percent of the total e-commerce market in 2021 (Coppola, 2021). Over the last two years however, the fear of being exposed to COVID-19, combined with governmental restrictions on public movement and business activity has led to an unprecedented boom of food e-commerce in Canada (Morningstar DBRS, 2022). The efforts to adjust to new realities seem to have had a long-lasting impact on consumer habits, and consequently on the landscape of food retail and meal delivery. The initial exponential surge in food e-commerce (an increase of 77 percent in internet sales of food from February to September 2020 [CFIA, 2022]) has brought a solid shift in food consumer trends that is likely to persist over the medium-long term, even in post-pandemic times. This phenomenon involves both online groceries retailers (e.g. Amazon, Walmart, Loblaws, Sobey, Metro) and meal delivery apps (e.g. Uber Eats, Door Dash and SkipTheDishes). There also has been substantial growth of fresh delivered meal kits in 2021, using platforms such as HelloFresh, Chef’s Plate and GoodFood (Manolakos, 2021; Agri-Food Analytics Lab, 2020b).

National regulation and policies relevant to food e-commerce

Like the majority of national regulatory frameworks that are analysed in this legal study, federal Canadian law does not address food e-commerce as such. Except for some guidance steps recently taken by the

Canadian Food Inspection Agency (CFIA) in terms of food information online, internet sales of food need to borrow rules from “partial stances”, that is, general e-commerce/internet regulation and food safety laws. Please note that this section mostly examines laws and regulations enacted at Canadian federal level.

E-commerce/internet regulation

While e-commerce legislation typically falls within the competence of Canadian provincial jurisdiction, in 1999 the Uniform Law Conference of Canada – a working group of more than 150 representatives of the private and public sectors – elaborated the [Uniform Electronic Commerce Act](#) to serve as a guide for provincial legislatures to address the legal uncertainties surrounding e-commerce operations. Except for Québec, electronic commerce legislation at provincial level is thus largely modelled on the Act, which, in turn, mostly incorporates the principles laid down by the UNCITRAL *Model Law on Electronic Commerce*, mentioned in Section 3.1.3 of this legal study (Dentons Canada LLP, 2016; Stikeman Elliott LLP, 2007). More specifically, the Act includes the principle of functional equivalence between electronic and paper-based communications and the rules allowing its effective implementation (Articles 5-18); specific provisions related to the communication of electronic documents such as the formation and acceptance of an offer, the use of electronic agents and the correction of errors (Articles 19-23); and rules dealing with the electronic version of certain documents pertaining to the carriage of goods (Articles 24 and 25) (Smith, 2000; Gregory, 2000). Unlike the European Union’s general legislation on e-commerce enacted around the same time, [Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market](#) (which is examined in Section 3.2.4), the Canadian *Uniform Electronic Commerce Act* does not deal with the safety of e-commerce transactions and the liability of internet service providers.

Consumer protection regulation

At federal level, consumer rights are governed by the [Canada Consumer Product Safety Act \(2010\)](#), which seeks to address the dangers to human health or safety posed by consumer products, including those that circulate within Canada and those that are imported (Article 3). However, the Act does not apply to certain products that would otherwise fall under the definition of a *consumer product*. Schedule 1 of the Act lists the exemptions, which include *inter alia* cosmetics, drugs, and food (Government of Canada, 2011). Similarly, the scope of the 2019 amended [Consumer Packaging and Labelling Act](#), mentioned in the “Food regulation” section below, does not cover food products. In this sense, foods as consumer products are in fact regulated, at Canadian federal level, by the comprehensive food legal framework illustrated in the following paragraphs.

Food regulation

Food safety legislation is a critical component of Canadian national regulation. This includes an extensive system of rules and principles applicable to the food produced, sold, transported, and imported in Canada, starting from the general framework laid down by the [Food and Drugs Act](#) and its implementing [Food and Drug Regulations](#).

The *Food and Drugs Act* includes the general prohibitions to sell poisonous, harmful, adulterated food products (Article 4) as well as to use false, misleading or deceptive labelling, packaging or advertisement connected to food (Article 5). The term label is defined, broadly, as “any legend, word or mark attached to, included in, belonging to or accompanying any food, drug, cosmetic, device or package (Article 2). The Act also provides for enforcement and monitoring powers, such as examination of documents, inspection of premises, sampling of products and seizure, disposal, removal or destruction of non-compliant products (Articles 22-28). Under the authority of the *Food and Drugs Act*, the *Food and Drug Regulations* regulate food products (along with drugs and cosmetics) to help protect the health and safety of consumers. These Regulations set out additional definitions and obligations, as well as standards of composition, strength,

potency, purity, and quality of specific articles of food (Article A.01.002). As for general labelling requirements, it is mandated that food information must be accessible, identifiable and visible: “the information required to be shown on a label shall not be shown on that part of the label, if any, that is applied to the bottom of a food or container” except where the same information or indication of where such information is located is also displayed elsewhere (Article B.01.005).

More specifically on the safety of food, the *Safe Food for Canadians Act* (SFCA) and its implementing *Safe Food for Canadians Regulations* (SFCR) motion rules for food inspection, safety, labelling and advertising, as well as for the establishment of registration or licensing of businesses performing activities related to food. The *Safe Food for Canadians Act* and *Regulations*, which fully came into force in 2019, consolidate and replace a number of existing food rules – including the food-related provisions of the *Consumer Packaging and Labelling Act* mentioned earlier and its connected *Consumer Packaging and Labelling Regulations*. They are enforced by the CFIA and generally apply to food for human consumption that is imported, exported, or inter-provincially traded for commercial purposes, even though some provisions cover intra-provincial trade as well (CFIA, 2018). The Healthy and Safe Food for Canadians framework was mainly created to improve food safety oversight and consumer protection, through new measures focusing on food tampering, food traceability, import controls, and licensing (USDA, 2022a). In particular, the SFCA reiterates the general prohibition for a person to “manufacture, prepare, package, label, sell, import or advertise a food commodity in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, quality, value, quantity, composition, merit, safety or origin or the method of its manufacture or preparation” (Article 6). In addition, and similar to the *Food and Drugs Act*, the SFCA includes rules related to monitoring and enforcement measures, such as inspections of premises and seizure of non-compliant food (Articles 24-31). More importantly, the SFCR clarify rules on licensing (Part 3), preventive controls (Part 4) and traceability (Part 5), which constitute the three pillars of Canada’s new food safety system (USDA, 2022a). Specifically, Part 3 allows the CFIA to authorize persons to conduct certain activities through licensing (i.e. food manufacture, process, treat, preserve, grade, package, and label [Article 7]); identify food businesses and collect information about their activities; and take responsive action in case of non-compliance. Part 4 prescribes food safety control principles that must be met by all food businesses. It outlines the requirements for developing, implementing, and maintaining a written preventive control plan that documents how food businesses meet food safety, humane treatment and consumer protection requirements (for example, for labelling, grading and packaging). Part 5 follows the “one step forward – one step back” approach, requiring that food be traced both to the immediate customer and to the immediate supplier (CFIA, 2018). It lays down, *inter alia*, the labelling requirements to enable traceability (Articles 90-92). In addition, Part 2 on trade includes general food safety requirements for all products traded internationally (as well as inter-provincially) (Article 8). It particularly states the principle according to which imported food must be prepared with the same level of food safety controls as food prepared in Canada (Article 11) (Kheradia, A.M. undated) and clarifies the information that must be provided to the CFIA in order to import food (Article 13). Moreover, the SFCR allows importers to import food without a Canadian address (fixed place of business) as long as they hold an address in a foreign country with a food safety system recognized as providing the same level of protection (Article 12) (CFIA, 2018). Parts 10 and 11 deal with, respectively, packaging and labelling requirements (e.g. language, legibility and type size).

Interestingly, there are general exemptions from the provisions of the SFCR, including in terms of licenses. These exemptions apply to, among others, food for personal use, when the food is imported, exported, sent or conveyed by an individual other than in the course of business. Under the SFCR, licenses are also not needed to manufacture, process, treat, preserve, grade, package, or label food at retail if the food is sold directly to consumers (this would encompass supermarkets, grocery stores, bakeries and butcheries). Similarly, licenses to manufacture, process, treat, preserve, grade, package, and label food at a restaurant or other similar enterprise for export or interprovincial trade are not required if the food is sent directly to consumers (CFIA, 2023). However, it should be noted that some of the traceability requirements are

applicable to businesses who sell food to consumers at retail, excluding restaurants or other similar enterprises. In this case, food needs to be traced back to the immediate supplier, but not forward to the consumer (CFIA, 2018).

Neither the *Food and Drugs Act* and its *Regulations*, nor the *Safe Food for Canadians Act* and its *Regulations* prescribe any rule specific to internet sales of food (in fact, the words “online”, “internet”, “digital” or “e-commerce/electronic commerce” are not present in the texts). Therefore, Canadian food law does not seem to clarify where online platforms (especially online intermediaries) stand in the regulatory framework, nor does it include rules tailored to the specificities of food e-commerce enforcement (including controls over online “imports” for self-consumption).

Nevertheless, the recent governmental consultation on the development of voluntary guidance for providing food information for foods sold to consumers through e-commerce demonstrates Canada’s renewed commitment towards food consumer protection online (CFIA, 2022). Noting that the increase in internet sales of food has brought challenges in terms of food information access, accuracy, and adequacy, Health Canada – the department of the Government of Canada responsible for national health policy – and the CFIA have indeed launched a consultation on the development of non-mandatory guidelines on food information online (USDA, 2022b). Specifically, the goal of the consultation – which ran from 9 May to 8 July 2022 – was to seek feedback from stakeholders and consumers on the challenges faced in obtaining, providing and/or maintaining information about foods sold through e-commerce as well as on the proposed principles for developing the guidance. Interestingly, in the context of the consultation, Canadian regulatory authorities provided a definition of (food) e-commerce, to be understood as “the sale of foods over computer networks, through web, extranet or electronic data interchange, by methods specifically designed for the purpose of receiving or placing of orders” (CFIA, 2022). The product information page is defined as “the space on any consumer-facing e-commerce platform that provides food information to consumers. It is meant to give consumers information they need to make informed purchases” (CFIA, 2022). Food information refers both to the core and other food-specific labelling requirements as well as voluntary claims or statements (Loney and Stucken, 2022).

Based on the input from the consultation and making reference to the current work of the CCFL on food information in an e-commerce context, as well as to the principles put forward by the European Union on mandatory information applicable to distance selling (which is examined in Section 3.2.4), Health Canada and the CFIA intend to propose that food information on an e-commerce platform should be aligned to the information required on the product’s physical label and that all foods sold through e-commerce should display their allergen content on the product information page (CFIA, 2022). More specifically, according to Canadian food authorities, the voluntary guidelines would be founded on the following principles applicable to all foods sold in Canada to consumers through e-commerce:

- Before the e-commerce purchase is concluded, the same food information that is required to appear on labels for food offered for sale in physical stores should be provided, in a manner that reflects, as much as possible, the manner in which it is presented on the food’s physical label.
- Before the purchase is concluded and upon delivery, allergen information should be provided for any foods offered for sale through e-commerce, including those packaged or prepared by the seller (e.g. take-out food from a restaurant).
- Images of a food should be provided to help consumers recognize the product.
- Food information and product images should be made available on the product information page before the purchase is concluded. If this is not possible, the information should be given using other appropriate means, as long as the consumer is given clear direction on where to find this information and the consumer does not incur any additional charge to obtain it.

- It should be indicated if and how the delivered food may differ from the one being offered for sale, and consumers should be advised to verify the label of the delivered food for those differences.
- Food information should be provided in both official languages (English and French). In this regard, e-commerce platforms should support accented characters that are required for proper spelling and reader comprehension.
- Food information should be provided in a consistent layout across all product information pages of an e-commerce platform, to facilitate comparison between products.
- Food information should be provided on a product information page in a manner that is clear, prominent, legible and readable from a screen.
- The structure of an e-commerce platform should be designed in a way that helps the user easily navigate and find food information, regardless of the specific device or screen size used.

Following this consultation, Health Canada and the Canadian Food Inspection Agency's plan is to start checking whether food information meets availability and accessibility standards, following a series of criteria: the number and types of food products offered for sale through e-commerce; the presence or absence of food information; the completeness of nutrition information; and the accessibility (in terms of languages, formatting, legibility, navigation) of food information (CFIA, 2022).

3.2.2. Chile

Food e-commerce context

The outbreak of COVID-19 in 2020 increased the value of retail e-commerce sales in all of Latin America by 35 percent compared to the previous year (Chevalier, 2022a). In Chile specifically, the value of annual e-commerce sales nearly doubled between 2019 and 2022 and the number of digital shoppers in the country experienced a rapid rise, reaching an estimated 12.7 million in 2022. This positive steady growth is not only due to the impact of the pandemic but also to the rapid development of technological infrastructure, the launch of 5G service in December 2021, and a consequent estimated 86 percent internet penetration rate in the country (International Trade Administration, 2023). Despite ranking first in terms of digital connectivity in Latin America, however, Chile only holds the fifth position as regards e-commerce market share in the region. Nevertheless, this position will likely improve in the future considering the rapid online shopping growth rate of more than 14 percent (data of 2022), just behind Brazil, Mexico, and Argentina (Chevalier, 2022b). In particular, e-commerce is forecast to show a 28 percent growth by 2024 and the number of e-commerce users is expected to increase by 11 percent by 2025 (International Trade Administration, 2023).

The year 2022 registered food as one of the top three categories of products purchased online in Chile, following apparel and technology (Chevalier, 2022c). During lockdown, the food retail sector was considered as an essential service and continued to operate without interruptions. Supermarkets and local stores shifted to online channels to reach consumers directly, increasing the value of food e-commerce by 133 percent (USDA, 2021a). Popular e-commerce platforms in Chile include: Mercado Libre, Falabella, AliExpress, Amazon and Lider. The online food delivery segment is dominated by PedidosYa, Uber Eats, Rappi and Uber-owned Cornershop (International Trade Administration, 2023; Chevalier, 2023).

National regulation and policies relevant to food e-commerce

The Chilean legislator has not yet adopted regulation specific to food e-commerce. However, there have been regulatory efforts addressing online platforms and e-commerce activities (including intermediary liability) as well as consumer rules focusing on distance sales (although seemingly excluding food sales).

E-commerce/internet regulation

E-commerce legislation in Chile, is supported by the *Law on Electronic Documents, Electronic Signature and Electronic Signature Certification Services (Ley n.º 19.799/2002)*, which provides that business-to-business and business-to-consumer contracts concluded electronically are equally valid and effective as those executed on paper (Araya, Magliona and Yuraszeck, 2021). In 2021, another law was added to the Chilean portfolio on e-commerce under the *Supreme Decree No. 6 of 2021 approving the Electronic Commerce Regulation*. The Regulation was adopted by the Ministry of Economy, Development and Tourism under Articles 30 and 62 of the *Law No. 19,496 on Consumer Rights Protection* (which is analysed later in the section), and it came in to effect on 24 March 2022. The purpose of the Regulation is to strengthen information quality and transparency, and consequently ensure consumer decision-making (Article 1) by focusing on the information to be delivered to consumers engaged in e-commerce transactions while also clarifying the legal status and duties of electronic platform operators in such transactions (Guillermo *et al.*, 2021). The Regulation applies to sellers who offer goods or services in electronic commerce platforms in exchange for a price or fee, and to the operators of electronic commerce platforms in which third-party products or services are offered (Article 2) (Garrigues, 2021).

The Regulation starts by defining certain concepts, including sellers, operators, and electronic commerce platforms. Sellers are understood as public or private providers, who usually offer goods or services to consumers, for which a price or fee is charged through electronic commerce platforms. Operators are providers that make an electronic commerce platform available to sellers, either their own or that of a third party, so that they can offer their products or services to consumers. Electronic commerce platforms include any internet site or platform accessible through electronic means, which allows sellers to offer products or services, and consumers to acquire them. This latter category does not cover online payment service platforms; platforms from which consumers cannot acquire the products or services offered; platforms in which only advertising is displayed; nor platforms in which consumers are merely redirected to the internet sites or seller platforms (Article 3). Further, the new rules address consent from the consumer, which requires previous clear, understandable, and unequivocal access to the general conditions of the contract and the possibility of storing or printing them. It is clarified that the sole visit to an electronic commerce platform does not impose any obligation on consumers, unless they have unequivocally accepted the seller's or platform operator's terms and conditions (Article 4). As for standards applicable to the delivery of information online, the Electronic Commerce Regulation states that the information provided online by sellers, on a self-operated platform, must be complete, clear, accurate, easily accessible, provided in a simple language that is easy to understand, and available prior to purchase. Sellers that offer their products or services through third-party platforms must provide the latter with the information mentioned above. The Regulation clarifies that in this scenario, it is up to the operator of the platform to supply consumers with the information provided by sellers prior to concluding the purchase (Article 6). As for information details about the seller, these include, among others, their name or company name, tax ID number, address, and means by which the seller will contact the consumer (Article 7). Other mandatory information particulars include: information on the essential features and guarantees of the product (Article 9); the terms of the transaction (Article 10); details on total cost (Article 11) and stock availability (Article 12), information on products' delivery, dispatch or pick-up (when the platform operator is the one providing the dispatch or delivery service, it must inform the consumer of this circumstance and deliver the information required by the Regulation in this regard – Article 13). Interestingly, the new Regulation also calls for greater transparency on the specific role of platforms: platform operators that offer third-party products are indeed required to clearly indicate, before the purchase is concluded, what their role in the sale consists of and which obligations they have, if any, vis-à-vis consumers (Article 8). Further, consumers must be informed on the right of withdrawal (Article 14) and on the contact support through which they can formulate questions, complaints, suggestions as well as make changes or returns (Article 15).

More generally on online platforms' regulation, the Chilean legislator is currently discussing a draft *Bill No. 14.561-19*, introduced in September 2021 for the purpose of regulating the situation of digital service platforms in Chile, as well as their users (Article 1). In particular, the draft Bill seeks to cover all digital platforms that specifically direct their content to the country, which for this sole fact will be governed by the new framework (Article 2). Digital service platforms are defined broadly as any digital infrastructure whose purpose is to create, organize and control, through algorithms and people, an interaction space where natural or legal persons can exchange information, goods, or services (Article 3(a)), and as such are aligning with the definition of online intermediaries, as adopted in this study. Providers of digital platforms include any natural or legal person that offers and manages a digital platform (Article 3(b)). Users of digital platforms are understood as being natural or legal persons that use a digital platform for their particular purposes and may or may not have the character of consumers or intermediaries (Article 3(c)). A digital consumer is any natural person who, by virtue of any legal act, acquires, uses, or enjoys, as final recipient, goods or services through a digital platform (Article 3(d)).

In the first section, the draft Bill introduces three pillars for digital platform regulation: a) the principle of equivalence between digital and physical space, according to which every user of a digital platform is entitled to at least the same rights and freedoms as well as the same duties and prohibitions as when operating in the physical environment; b) the principle of regulatory compliance, following which digital platforms must be designed to meet the constitutional, legal and regulatory requirements in force in Chile; and c) the principle of universal access, which states that digital platforms must guarantee the provision of a universally accessible, non-discriminatory service. In the second section, the draft Bill lays down a series of rights and duties in the digital space. Platforms are subject to the obligation to be designed neutrally with respect to the content they manage and to treat data traffic in an equitable manner without discrimination, restriction, or interference, regardless of the sender and receiver, nor of the content that is accessed or distributed (Article 5). Digital consumers hold the right to freedom of expression on a digital platform unless content can be considered injurious, slanderous, or constituting threats or crimes (Article 6). As regards intermediary liability, the same provision clarifies that providers of digital platforms are not responsible for content online if they have not originated its transmission nor modified it. They will only be responsible if they have acted in any of the ways that the law deems illegal, either for exceeding the typical scope of the provision of their service, or for not acting diligently to block or remove content when they have effective knowledge of its illegal nature. In a seemingly contradictory manner, however, Article 15 imposes on platforms supplier responsibility, i.e. "strict liability" for all damages caused to a user (APC, 2021). The proposal also seeks to combat disinformation by dictating that manifestly false information may be clarified or rectified by the provider of the digital platform through notices attached to it. Furthermore, digital consumers have the right to rectify the content broadcast through digital platforms that may threaten their image or privacy on the internet, the right to non-disclosure of their personal data and the right to have their profile removed in case of death (Article 7). Providers of digital platforms also have the duty to protect people considered vulnerable by law (e.g. reasons related to age, condition, etc.), including by warning them about sensitive content and by establishing appropriate age verification mechanisms (Article 8). As regards content moderation systems put in place by the platforms, all users of digital platforms have the right to be informed in an intelligible manner about the reasons behind the decisions that platforms make regarding them or the content provided by them (Article 10). Transparency must also be guaranteed as regards artificial intelligence: digital consumers have indeed the right to be informed whenever they interact with algorithms or artificial intelligence mechanisms. Finally, users of digital platforms have the right to due process, that is, the right that decisions taken by platforms on content moderation be substantiated and that the claims made by users be processed by transparent and fast digital dispute resolution mechanisms (Article 12).

Consumer protection regulation

As illustrated, the Electronic Commerce Regulation details online information standards for the benefit of consumers involved in e-commerce transactions. More generally, consumer rights are laid down in the Chilean consumer code, the *Law on Consumer Rights Protection* mentioned above. The Law regulates the relationship between suppliers and consumers, the former being natural or legal persons, public or private, who regularly carry out activities of production, manufacture, import, construction, distribution or commercialization of goods or provision of services to consumers, for which a price or fee is charged (Article 1). Consumer rights include: the right to truthful and timely information about the goods (Articles 3 and 33); the right to product safety and health protection; the right to compensation and reparation for damages (Article 3); and the right to non-deceitful, non-confusing and non-misleading advertising (Article 28-28A). As a general rule, consumers must exercise their legal rights vis-à-vis the seller of the product. However, according to Article 21, in certain circumstances other actors (e.g. manufacturer, importer) might be liable for lack of conformity required by law (Andrade, 2022).

The Consumer Rights Protection law also introduces special provisions for distance contracts (Rodriguez and Rojas, 2022). Consumers have the right to withdraw from the contract within 10 days from receipt of the product where, among others, such contract is entered into by electronic means or an offer is accepted through catalogues, notices or any other form of remote communication. However, this right is excluded in the case of goods for personal use or goods that, by their nature, cannot be returned or may deteriorate or expire quickly (Article 3 bis). Similar to the Electronic Commerce Regulation, the Consumer Rights Protection law states that for contracts concluded by electronic means contractual consent by consumers requires clear, understandable and unequivocal access to the general conditions of the transaction, clarifying that the mere visit to an internet site does not impose any obligation on the consumer, unless they have unequivocally accepted the conditions offered by the supplier (Article 12 A). Suppliers also have the obligation to inform consumers in an unequivocal and easily accessible manner about the steps necessary to conclude contracts offered by electronic means, indicate whether the electronic document in which the contract is formalized will be filed and accessible to the consumer, and provide their address of postal or electronic mail and the technical means for consumers to identify and correct errors in the shipment or in their data (Article 32). Suppliers must also make available the prices, essential features, and benefits of the goods they offer, in a clear and visible way, including on the internet sites where goods are displayed (Article 30). Interestingly, the Law also provides for higher sanctions in case false or misleading advertising related to specific elements (e.g. components, characteristics and price of the goods) is spread through social media or affects products related to the health and safety of the population (Articles 24 and 28).

Food regulation

In Chile, food products are primarily governed by [*Decree No. 977 of 1996 on Sanitary Regulation for Food Products*](#) (and its later revisions). The Decree No. 977 establishes sanitary conditions applicable to production, import, elaboration, packaging, storage, distribution, and sale of food for human use, as well as the conditions in which their advertising must be carried out, with the purpose of protecting the health and nutrition of the population and guaranteeing the supply of healthy and innocuous products. Its scope covers all natural or legal persons connected to or intervening in such processes, as well as the establishments and means of transportation and distribution intended for such purposes (Article 1). In particular, the Decree No. 977 requires all food establishments, i.e. premises in which food and food additives are produced, processed, preserved, packaged, stored, distributed, sold and consumed, to obtain authorization from the competent Health Service (Articles 5 and 6). Subsequent record-keeping obligations are imposed upon competent authorities as regards the line of business, location and owner of all authorized establishments (Article 13). Operators must adhere to general hygiene practices in every stage of the food chain, including preparation, processing, packaging, storage, transportation, distribution and sale of food, in order to guarantee a

safe and healthy product (Article 11): specifically, safety and hygiene standards apply to, among others, establishments (Articles 22-37 and 38-51); personnel (Articles 52-60); food processing (Articles 61-70); and food sale (Articles 71-75). Responsibility for compliance with the Decree No. 977 – *in primis*, with the prohibition to manufacture, sell, import, or distribute altered, adulterated, falsified, and contaminated food (Article 102) – falls upon the producer, importer, packer, distributor, seller or holder of the product, either individually or jointly, depending on the stage of the food chain (Article 95). Falsified food, in particular, includes food designated, labelled or sold with a name or qualifier that does not correspond to its origin, identity, or nutritional value or whose packaging, label or advertisement contains ambiguous, false or misleading statements regarding its ingredients (Article 100).

As for requirements related to content in labelling, which is defined as a set of inscriptions, legends or illustrations contained in the label that inform about the characteristics of a food product (Article 106(27)), the Decree No. 977 provides a list of mandatory particulars for all packaged food products stored, transported or sold (Article 107): *inter alia*, food name; net content; name and address of the manufacturer, producer, processor, packer, or distributor, as applicable; country of origin; date of manufacture or packaging date of the product; expiration date or shelf life of the product; ingredients; additives; instructions for use; and in the case of imported products, the name and address of the importer (USDA, 2021b). The information must be displayed with visible, indelible, and easy-to-read characters, in Spanish, and possibly repeated in another language (Article 109). Labelling and advertising must not contain words, illustrations and other graphic representations that may lead to misunderstanding, deceit, or falsehood, or that in any way are likely to create an erroneous impression regarding the nature, product composition or quality of the food (Article 110). Responsibility for the reliability and accuracy of labelling is imposed upon the manufacturer, importer and/or final packer (Article 114). More specifically as regards food imports, all imported products must comply with the labelling provisions stipulated in the Decree No. 977 (Article 108). The importer is also obliged to keep a record of all items imported into the country, for a minimum period of 90 days after their expiration date, especially regarding information on the customs destination, the sanitary background of the product, the authorization for use and consumption, the expiration date, the country of origin, and the name of the foreign supplier (Article 107). The Decree No. 977 does not contain any provision tailored to food e-commerce. The only reference to mass media platforms relates to foods high in sugar, fat and sodium. The advertising of these products by mass media must include a message that promotes healthy living habits (Article 100 bis – see also [Law 20,606 on Nutritional Composition and Advertising of Food](#)). As for labelling standards specifically, these seem designed to adhere to the traditional concept of physical label attached to prepackaged products as opposed to a broader notion of food information encompassing all means of communication, including web portals. Labels are in fact defined as tags, brands, marks, pictures or other descriptive or graphic matter, which are written, printed, stencilled, embossed, branded, engraved, or stamped on or attached to the packaging of a food (Article 106(29)).

General rules on food safety are also included in Chile's [Decree 725 Health Code](#) (of 1967 and later amendments). Similar to Decree No. 977, the *Health Code* prohibits the manufacture, import, possession, distribution and transfer, in any capacity, of contaminated, adulterated, falsified or altered food products (Article 104). Supervision responsibilities fall within the competence of the Ministry of Health regional offices, especially in regard to the installation of premises destined for the production, preparation, packaging, storage, distribution and sale of food (Article 103). The *Health Code* also regulates the liability for defective sanitary products, including foods ([Gillmore and Busquets, 2022](#)). Defective products are understood as any product not offering sufficient safety, taking into account all the circumstances related to it and, especially, its presentation and reasonably foreseeable use (Article 111(H)). It is clarified that the holders of registrations or authorizations, the manufacturers and the importers, as appropriate, will be responsible, jointly and severally, for the damages (Article 111(I)). The last part of the Code deals with inspection procedures and sanctions. These include: fines; closure of establishments, premises, or workplaces; cancellation of the

authorization granted; interruption of operations; suspension of the distribution and use of the products in question; and withdrawal, confiscation, or destruction of the same (Article 174). The same enforcement measures apply to non-compliance as per Article 542 of the Decree No. 977, which stipulates the Health Code.

3.2.3. China

Food e-commerce context

With a population of 1.4 billion people, China has one of the largest and fastest growing e-commerce markets worldwide (The World Bank and Alibaba Group, 2019). The exponential rise of e-commerce in China may be explained by several factors: the increased convenience of online offers versus bricks-and-mortar sales, geographical constraints and market scale of the country, the severe restrictions on public movement following the outbreak of the Covid-19 pandemic (USDA, 2020), as well as China's rapid development of internet technology, including in rural areas. Indeed, data from 2020 show a solid digital infrastructure and an extensive internet use by the Chinese population (65 percent, amounting to 861 million users, with a forecast of 97 percent of the total population in 2040). The main drivers behind the boom of e-commerce are online platforms, among which the top e-commerce players in 2020 are Alibaba Group Holding Ltd. (Tmall and Taobao platforms), [JD.com](#) Inc., Pinduoduo Inc., and [Suning.com](#) Co. Ltd. (Amazon merely holds the 13th position among top e-commerce companies). The rise of e-commerce channels is also linked to China's mobile connectivity and the increasing use of mobile devices to shop online through social media apps (WeChat, Weibo, Douyin) (AAFC, 2022). Other platforms providing meal delivery services include [Ele.me](#) (part of the Alibaba Group) and Meituan.

Online platforms in China are active in a wide range of food e-commerce activities, including online food retailing, online catering services and cross-border food e-commerce (Xiao, 2019). The success of food e-commerce in China is also linked to the phenomenon of rural e-commerce.⁹ While being a highly technological country, China is in fact very much still reliant on agricultural production and is comprised of a large rural population (over 40 percent – data from 2017 (FAO, 2017)). The idea behind rural e-commerce is that e-commerce routes may be a tool to alleviate poverty among farming communities and boost rural development. This is achieved by improving farmers' access to markets through internet technology, not only to buy agricultural resources and machinery as well as a wide range of consumer products and services but also to start their own online businesses and sell their produce (FAO, 2017). In this context, Alibaba has launched the Rural Taobao initiative by building clusters of e-commerce centres ("Taobao Villages") to help farmers participate in Chinese e-commerce as part of a two-way relationship with urban territories (SAMPi, 2017): the urban territories have direct access to fresh produce while the farmers benefit from quality consumer products at lower prices while having more outlets for the foods they produce. E-commerce infrastructures and logistics are also coupled with regular trainings and educational resources to local villagers about e-commerce operations, financial stages and benefits (Ünal, 2016).

As a final mention, the e-commerce ecosystem in China has recently been enriched by an additional model. Cross border e-commerce (CBEC) platforms provide an innovative distribution channel for introducing specific consumer-oriented packaged products to China, including food. The CBEC platforms may be small, specialized websites exclusively dedicated to CBEC operations, or may be integrated into larger companies as one of their many channels: for instance, popular e-commerce platforms such as Tmall Global and [JD.com](#) Worldwide have established designated websites for CBEC.

⁹ This phenomenon is not specific to the Chinese context: other countries such as Viet Nam, India and Egypt have indeed activated efforts on rural e-commerce. See Sun and Li, 2022.

National regulation and policies relevant to food e-commerce

Over the years, the increasing impact of food e-commerce on Chinese consumer habits and businesses' economic models has affected regulatory choices, aiming at ensuring that food safety and quality requirements were met on the online distribution channels as with physical stores. The Chinese legislator has thus taken its own regulatory approach to (food) e-commerce (Xiao, 2018). This approach not only deals with operators selling online through e-commerce websites but focuses on platform responsibility as well, particularly on the obligations imposed upon online intermediaries permitting third-party sales on their channels.

E-commerce/internet regulation

Recognizing the need to introduce a framework capable of addressing the outstanding role that internet sales have adopted in the past decade, the Standing Committee of China's National People's Congress enacted the first *E-Commerce Law* in China in August 2018 (Xiao and Liu, 2019). The E-Commerce Law defines e-commerce as the business activities of selling commodities or providing services through information networks such as the Internet (Article 2). As for its scope, the Law covers a wide range of topics, including consumer protection, cybersecurity, cross-border operations and liabilities. Regarding consumer protection, the Law states that e-commerce operators are required to follow the principles of, *inter alia*, equity, fairness, integrity, compliance with the laws as well as consumer rights protection. E-commerce operators must also bear responsibility for product quality and accept government supervision (Article 5). The expression "e-commerce operator" is understood to be broad, comprising natural persons, legal persons and unincorporated organizations engaged in the business activities of selling commodities or providing services through the internet and other information networks, including e-commerce platform operators, operators on platforms, and e-commerce operators who build their own websites or other network services to sell goods or provide services (Article 9). This definition covers all operators selling online, not only through platforms such as Alibaba but also social media (e.g. WeChat) (Xinhuanet, 2018). On the one hand, "operators on the platform" are more specifically defined as the e-commerce operators who sell goods or provide services through the e-commerce platform. "E-commerce platform operators", on the other hand, are any legal person or an unincorporated organization that provides online business premises, transaction matching, information release and other services for two or more parties in an e-commerce transaction, so that two or more parties can independently conduct transaction activities. Therefore, it appears that under the E-Commerce Law, online intermediaries – functionally similar to "platforms" in the language of the Law – as well as online traders (using either their own website or third-party platforms) are responsible for consumer protection, product quality, and more generally compliance with applicable rules.

The Law clarifies responsibilities and obligations further. First, all e-commerce operators have registration obligations, except for: individuals selling self-produced agricultural goods; those engaged in sporadic small-value transactions; and those excluded from licensing requirements under existing norms (Article 10). Business license/registration updated information must be displayed in a prominent position on the website's homepage (Article 15) (Clark, 2019). Plus, as a general principle, commodities sold by e-commerce operators must be safe and not prohibited by laws (Article 13). Information about the product sold must be made available to consumers in a comprehensive, truthful, accurate, non-misleading and timely manner (Article 17).

The E-Commerce Law further provides for obligations specifically applicable to e-commerce platform operators, which testifies to the leading role of online intermediaries in China's e-commerce environment. The online intermediaries must require sellers on the platform to submit truthful information as regards their identity, contact details and licenses as well as conduct regular checks on the information submitted (Article 27). E-commerce platform operators also have reporting obligations to competent authorities

as regards unsafe products and unlicensed businesses (Article 29), as well as a duty to prevent illegal activities on their platform, including through contingency plans for cybersecurity incidents (Article 30). Other obligations include the need to clarify aspects related to products' quality assurance and consumer protection rights (Article 32) and the need to specify and mark whether the platform conducts its own sales, distinguishing them from third-party sales (Article 37). In the context of internet protocol (IP) violations, the well-known safe harbour mechanism (also known as notice and takedown rule) and "red flag" exception for the safe harbour are also established by the law. Safe harbour mechanism is a liability immunity mechanism exempting platforms from taking certain liabilities, provided that they diligently take down illegal contents therefrom upon notice (Article 41-44). In contrast, the "red flag" exception for the safe harbour nullifies the liability immunity, when a platform knows and should have known of the violations and does not take necessary measures (Article 45). Here arrives at the test of "knows and should have known" which indicates a situation in which violations are so obvious like a red flag waving in the wind. China's *Civil Code* then also introduced similar safe harbour and "red flag" provisions to empower all kinds of right holders to protect themselves, which amounts to extending application of safe harbour and "red flag" rules to almost all illegal contents in the digital world (Article 1194-7). More importantly, when it comes to ensuring safety of products and services, though platforms enjoy general safe harbour protection, the "red flag" exception is reiterated. It is clarified that operators of an e-commerce platform, who know or should know about products not meeting the requirements for the protection of personal and property safety, or about violations of the legitimate rights and interests of consumers, and who fail to take necessary measures, will bear joint and several liability with the third-party operators in accordance with the law. Platforms shall also be correspondingly liable in accordance with the law, whenever goods related to consumer health and safety – arguably, food and drugs for instance (Xiao and Liu, 2019) – have caused damages, if they have failed to review the qualifications of the third-party operators or have not performed effective safety consumer protection (Article 38).

Therefore, while the newly enacted E-Commerce Law is mostly not tailored to internet sales of food, it does heavily affect food e-commerce operations as it introduces significant provisions for operating in the online world, including registration requirements, consumer protection obligations and a liability framework (SFSA, 2019).

The E-Commerce Law also introduced a few provisions to promote CBEC (Articles 71-73). Given the fact that these provisions incorporated into Chapter V titled "Promotion of E-Commerce" are by nature of industry promotion, it provides no regulatory rules on CBEC. However, in 2018, China's Ministry of Commerce, the National Development and Reform Commission together with the Ministry of Finance published the *Notice on Improving the Supervision over Cross-border E-commerce Retail Imports* (hereinafter Notice) specifying regulatory rules on CBEC, which is to fulfil the unaccomplished missions of setting up regulatory rules on CBEC. Nevertheless, of note here is that, unlike in Indonesia (see below), where cross-border activities are required to comply with the provisions of the laws and regulations governing exports and imports, the regulatory rules as affecting CBEC specified in the Notice are indeed deviated from and therefore contradict pre-existing legislation relating to e-commerce and food safety, attracting criticism to some extent.¹⁰ But they are meant to be tentative and experimental, so they are de facto the most important effective rules guiding CBEC development including cross-border food e-commerce in China. The cross-border e-commerce retail imports are defined as a type of e-commerce by which Chinese consumers buy goods from abroad through third-party cross-border e-commerce platform operators and have the bought goods transported into China under: 1) the "imports through direct purchasing" (*Code of customs supervision mode: 9610*), namely the business to consumer (B2C) model; or 2) the "imports through bonded online shopping" (*Code of customs supervision mode: 1210*), namely the business to business to consumer (B2B2C) model (Article 1). From time to time, China publishes a *List of Cross-Border E-commerce Retail Imports*, which includes foods

¹⁰ See Section 3.2.5 of this study: Indonesia national regulation and policies relevant to e-commerce.

permitted through CBEC. An updated list was announced in 2022, with around one third of those being foods (TMO Group, 2024). Foods incorporated in the list include cured meat, frozen seafoods, milk products, honey, alcoholic beverages, and food supplements, among others.

The Notice created a set of obligations for cross-border e-commerce enterprises, mainly centred on consumer protection. These cross-border e-commerce enterprises shall be responsible for ensuring the quality and safety of goods and must fulfil relevant obligations according to the regulations. A Chinese enterprise handling industrial and commercial registration formalities shall be authorized to undergo customs registration procedures, take the responsibility of customs declarations, accept the supervision of relevant departments, and assume joint and several liabilities. They shall be responsible for protecting the rights and interests of consumers, including but not limited to disclosure of product information, returns and refunds of goods, establishment of a recall system for substandard or defective goods, and compensation for the damages to consumers' rights and interests caused by product quality defects. When product quality and safety risks are found, or quality and safety problems occur, the enterprises shall immediately stop selling the goods, recall the sold goods and handle them properly, prevent them from re-entering the market, and report the recalling and handling results to the customs and other regulatory departments in a timely manner (Article 4.1.1). They shall fulfil the obligation of reminding and notifying consumers, and working together with cross-border e-commerce platforms to give risk alerts on the webpage for purchasing goods or other eye-catching positions so that consumers cannot order or buy the goods unless agreeing with specific alert information. The alert shall at least include the following contents:

- a. Relevant goods comply with the standards or technical regulations of the place of origin for quality, safety, hygiene, environmental protection, and indications, which may differ from China's standards and requirements. Therefore, consumers shall bear the risks on their own.
- b. Relevant goods are directly purchased from overseas and may not bear a Chinese label. Consumers, however, may check the goods' Chinese electronic label through the internet.
- c. Consumers buy products for their personal use only and shall not resell any of them (Article 4.1.3).

Similar to Chinese cross-border e-commerce enterprises, the Notice also specifies responsibilities for cross-border e-commerce platforms. These responsibilities include, but are not limited to, monitoring of business activities as conducted by cross-border e-commerce enterprises operating therein, rule setting and reporting to regulatory authorities. They shall be registered in China, go through customs registration procedures according to relevant regulations, accept the supervision of competent departments, and cooperate with them in follow-up management and law enforcement. Cross-border e-commerce platforms shall transmit to the customs in real time the electronic data of transactions on imported goods in cross-border e-commerce retail affixed with an electronic signature, review the authenticity of the transactions and of the consumers' identities, and assume corresponding liabilities (Article 4.2.1). They should establish a sound management system, including: transaction rules on the platform, transaction security control, protection of consumers' rights and interests, and processing of unpleasant information; authenticate the identities of the cross-border e-commerce enterprises that apply for entering the platform, publicize the information of the entity's identity, consumer evaluation and complaint on its website, and provide to the regulatory departments such information as enterprises entering the platform; and sign agreements with cross-border e-commerce enterprises that apply for entering the platform, and determine the responsibilities, rights and obligations of both parties in terms of the entity's responsibility in product quality and safety, protection of consumers' rights and interests, and other requirements in this Notice (Article 4.2.3). Platforms are required to establish a consumer dispute settlement and consumer rights protection system, according to which consumers buy products on the platform; and the platform shall assist consumers in protecting their lawful rights and interests if they are damaged and assume the liability for advance compensation (Article 4.2.5). The platforms shall, according to the requirements of the regulatory departments, effectively manage the

products for sale on the platform, close down the webpages displaying and selling the imported products that are prohibited from entering China in the form of cross-border e-commerce retail, and report relevant conditions to the competent departments (Article 4.2.8).

Consumer protection regulation

The Chinese code on consumer protection, i.e. the *Law of the People's Republic of China on Protecting Consumers' Rights and Interests* of 1993 (last amended in 2013), lays down the general rights and interests that consumers have when entering into transactions to buy or use commodities for purposes of daily consumption (Article 2). These rights include, *inter alia*, personal and property safety (Article 7), accurate product information (Article 8), fair trade (Article 10), compensation for damages (Article 11), and reporting of violations (Article 15). As a *lex generalis*, this Law provides a general framework on consumer rights, including those related to food e-commerce. However, it typically comes into play only where these rights are not covered by the more sector-specific pieces of regulation analysed above and below.

However, a 2013 amendment to the Law did add some provisions relating to e-commerce, which also affect food e-commerce in general while protecting food e-commerce customers. In addition, provisions setting out punitive damages in the context of product frauds and product defeats are of relevance to food e-commerce. They deserve further attention, as these provisions very much reshape China's consumer protection landscape largely affecting food e-commerce. These provisions are highlighted in the four paragraphs that follow.

First, according to the provision in Article 25, e-commerce customers are entitled to have withdrawal rights. Where business operators sell commodities on the internet, on television, over telephone, or by mail order, among others, consumers shall have the right to return the commodities within seven days of receipt of them without cause, except the following commodities e.g. fresh, live, or perishable commodities, and others unsuitable for return by nature (Article 25). In practice, lots of e-commerce operators including food operators offer free returns within seven days (or even more) of purchase in China, and some operators will even cover the return transport fees.

Second, e-commerce operators have to ensure certain information is provided to customers. According to Article 28, business operators providing commodities or services on the internet, on television, over telephone, or by mail order, among others, shall provide consumers with information on their business addresses and contact methods, the quality, quantity, and prices or fees of commodities or services, the duration and manner of performance, safety precautions and risk warnings, after-sales services, and civil liability (Article 28).

Third, under Article 44, food e-commerce customers are entitled to claim compensation from platforms when there are non-compliances from traders on the platforms, under certain conditions. This is a so-called joint liability mechanism between platforms and traders established under the 2013 amendment. Consumers whose lawful rights and interests are infringed upon in purchasing commodities or receiving services through online trading platforms may claim compensation from the sellers or service providers. If the providers of online trading platforms are unable to provide the true names and addresses and valid contact methods of the sellers or service providers, consumers may also claim compensation from the providers of online trading platforms. The platforms may also establish protections more favourable to consumers, in which case they are additionally bound by those. The providers of online trading platforms shall, after compensation, have the right to be reimbursed by the sellers or service providers. Where the providers of online trading platforms know or should have known that the sellers or service providers infringe upon the lawful rights and interests of consumers through the platforms, but fail to take necessary measures, they shall be jointly and severally liable with the sellers or service providers (Article 44).

Fourth, China ensures a consumer's right to punitive damages through consumer protection regulation. The 2013 amendment of the Law introduced a consolidated punitive damages mechanism, which largely reshapes China's consumer protection. Business operators which fraudulently provide commodities or services shall, as required by consumers, increase the compensation for consumers' losses, and the increase in compensation shall be three times the payment made by a consumer for the commodity purchased or the service received, or shall be 500 yuan if the increase as calculated before is less than 500 yuan, except as otherwise provided for by the law. Where business operators knowingly provide consumers with defective commodities or services, causing death or serious damage to the health of consumers or other victims, the victims shall have the right to require business operators to compensate them for losses in accordance with Articles 49 and 51 of this Law and other provisions of laws, and have the right to claim punitive compensation of not more than two times the amount of losses incurred (Article 55). The original text in 1993 first introduced punitive damages in China, which was less stringent than the present 2013 text. Though still contestable today, the punitive damages mechanism plays a growing role in defending consumer rights in e-commerce related court decisions (lots of these cases are relating to food e-commerce) – see Box 1.

Box 1. Consumers claim their right to punitive damages

In *Shi Hai v. Wudu Garden Pharmacy* (2019), Shi Hai requested Dai Shibo's help to buy 27 boxes of Ginseng-based food products, among other things, from the web shop owned by Wudu Garden Pharmacy, and he paid RMB 1 800. These products claimed to be health foods, which are categorized as special foods according to China's *Food Safety Law*, under which health foods have to be registered through the national food authority. However, the products were revealed to be unregistered health foods. Shi Hai then filed a lawsuit against the web shop owner and claimed 10 times his payment for punitive damages. In a second hearing of the case, the court upheld Shi's claim for punitive damages.

Similarly, in *Tang Xiaolong v. Shenzhen Longgang District Suili Trading Company* (2022), Tang Xiaolong purchased a certain brand of health foods claimed to have originated from Japan, from a web shop trading on the platform Taobao. The web shop was operated by Shenzhen Longgang District Suili Trading Company. After receiving the products, Tang found that the products had not been registered in China and there was no Chinese labelling, therefore Chinese consumers could not understand the information on the label. Tang filed a lawsuit against Shenzhen Longgang District Suili Trading Company and claimed 10 times his payment for punitive damages. The court at the second hearing once again upheld Tang's claim.

Source: Shi Hai v. Wudu Garden Pharmacy (梁迪、吴雨买卖合同纠纷再审民事判决书(2019)川民再646号); Tang Xiaolong v. Shenzhen Longgang District Suili Trading Company(深圳市龙岗区碎丽贸易商行唐小龙网络购物合同纠纷民事二审民事判决书(2022)湘07民终437号).

It may be noted that the regulation of joint liability between platforms and traders, and the punitive damages mechanism established in this consumer protection law were borrowed by the *Food Safety Law* (mentioned in the next subsection), which in turn developed them with their own specific characteristics.

Food regulation

China's *Food Safety Law* (FSL) of 2009, with two amendments in 2015¹¹ and 2021, is considered the most rigorous piece of legislation on food safety ever passed in China (Keller and Heckman, 2015). It covers a variety of food safety topics such as food safety risk monitoring and assessment; food safety standards; labels, instructions and advertisements; special foods; food import and export; and the handling of food safety incidents.

¹¹ The 2015 amendment to the Food Safety Law was a major revision of the original texts but following this, China made another two minor revisions in 2018 and 2021 with no substantial changes to food e-commerce regulation.

The FSL includes, *inter alia*, rules specific to internet sales of food (Xiao, 2019). Unlike the *E-Commerce Law* previously analysed, the FSL does not provide a definition of (food) e-commerce. However, it does focus on the central role of online intermediaries (referred to as “providers of third-party platforms for online food trading” in the legislative text) in the promotion of a safe online trade environment by imposing upon them a series of supervisory responsibilities, both at entry level and during the course of operations. Of note here is the fact that online intermediaries or providers of third-party platforms for online food trading are not treated as food business operators, but as a standalone legal entity distinguished from food business operators under the FSL (Xiao, 2022). In particular, it mandates that providers of third-party platforms for online food trading conduct real-name registration of online food business operators, and clearly outline food traders’ responsibilities for food safety management. If a license should be obtained in accordance with applicable laws, this license should also be reviewed. Should the platform provider find that the online food business operator violates the provisions of the FSL, it must stop the infringement and report it to the local food authority. In case of serious violations, however, the platform operator must immediately stop providing online trading platform services to food business operators (Article 62). The FSL also provides for corresponding liabilities and sanctions against providers of third-party platforms for online food trading who fail to fulfil the obligations laid down in Article 62: administrative measures include order to make corrections, seizure of illegal gains, and fines. In case of serious consequences deriving from the infringements, the online business must be suspended until the license is revoked by the original license-issuing department. As for civil remedies, as noted above, the joint liability between platforms and traders was borrowed from China’s consumer law but evolved to have its own unique characteristics. Therefore, consumers who have their rights damaged as a consequence of food purchased through a third-party platform, may claim compensation from the online food business operator or the food producer. However, if the platform provider is unable to supply the real name, address and valid contact information of the online food business operator, compensation obligations will fall upon the platform provider. The latter is subsequently entitled to claim the damages from the accountable online food business operator or producer (Article 131).

Equally important is the consolidation of the punitive damages mechanism in the FSL to further ensure consumer rights to punitive damages in case of foods. As discussed above, the punitive damages mechanism was first introduced in China’s consumer protection law. When China enacted its first FSL in 2009, this mechanism was borrowed into the Law entitling consumers to larger punitive damages. Besides claiming damages, a consumer may require the producer, who produces food which does not conform to the food safety standards, or the seller, who knowingly sells food which does not conform to the food safety standards, to pay 10 times the price paid for the products (as punitive damages) (Article 96, para. 2 of the 2009 FSL). Following this, in 2015 the mechanism was consolidated to entitle consumers to the largest punitive damages so far. In addition to claiming damages, a consumer could require a producer of food failing to meet the food safety standards or a trader knowingly dealing in such food, to pay an indemnity of ten times the price paid or three times the loss; or if the amount of the additional compensation is less than RMB 1 000, it shall be raised to RMB 1 000, except for cases of defects in the labels or instructions of the food where neither impair food safety nor mislead consumers (Article 148, para 2 of the 2015 FSL). It was revealed that the number of e-commerce lawsuits in 2017 increased by more than 40 percent, of which more than 50 percent of lawsuits were related to food e-commerce (Pinghui and Wayne, 2023).

Following the 2015 FSL amendment, two implementing rules were introduced: the *Measures for the Investigation and Punishment of Illegal Acts Concerning Online Food Safety of 2016* (amended 2021) (hereinafter Online Food Safety Measures); and the *Measures on Supervision and Administration of Food Safety in Online Catering Services* of 2017 (amended 2020) (hereinafter Online Catering Services Measures).

Under the Online Food Safety Measures, there are three types of online food trading actors: 1) third-party platforms of online trading; 2) online traders through third-party platforms; 3) online traders through self-

built websites. The latter two types of actors (2 and 3) are collectively called online food business operators. This means that third-party platforms of online trading are not treated as food business operators. The Online Food Safety Measures lists a series of obligations specific to platforms, including but not limited to:

1. setting up a food safety department or designating full-time food safety management personnel to conduct inspections on the platform (Article 14, para. 1);
2. putting an end to and reporting food safety violations to local authorities (Article 14, para. 2); and
3. ceasing to provide transaction services to business operators found to commit serious violations (Article 15).

In addition to platform obligations, the Online Food Safety Measures imposes upon online food business operators a few obligations including, food information disclosure, among other things (Articles 15-20). Furthermore, these Measures also include rules for conducting official investigations, such as on-site inspections, interviews, online purchases and sampling (mystery shopping¹²) (Articles 24-27). The mystery shopping mechanism is mentioned with limited elaboration in Article 25, but the mechanism has since been consolidated through the *Measures for the Administration of Sampling Inspections of Food Safety*, as amended in 2022. Finally, the Online Food Safety Measures provides a list of penalties for violations of the obligations put forward (Articles 28-45). In regard to the Sampling Inspection Measures mentioned above, when carrying out online sampling inspections of food the food authorities shall pretend to be buyers and record the buyers of samples, their payment accounts, registered accounts, receiving addresses, and contact information, among others. A sample buyer shall, by screenshot, taking photos, making records, and other means, record the information on the food producers and dealers subject to online sampling, the information displayed on the webpage of the samples, and order information and payment records, among others. After receiving a sample, a sampling officer shall, by taking photos, making recordings, and other means, record the unsealing process, check the delivered package, sample the package and sample storage and transportation conditions, among others, and respectively seal up the samples for inspection and backup samples for re-inspection (Article 18).

Under the Online Catering Services Measures, there are three types of online catering actors: 1) third-party platforms of catering service providers; 2) catering service providers through third-party platforms; 3) catering service providers through self-built websites. The latter two types of actors (2 and 3) are collectively called online catering service providers (Article 2). That again reaffirms that third-party platforms of catering service providers are distinguished from online catering service providers. The former are not treated as food business operators, whereas the latter are considered food business operators. This is in line with the FSL and the Online Food Safety Measures. A few obligations are imposed upon the third-party platforms of catering services, including, but not limited to:

1. establishing and implementing the systems for the examination and registration of online catering service providers; stopping and reporting of violations of food safety laws; shutoff of platform services for serious violation of laws, and disposal of food safety accidents, among others, and publicly disclose the relevant systems on the platform (Article 6);
2. establishing a specialized food safety administration institution staffed with full-time food safety administration personnel who shall be trained and assessed annually. The training and assessment records shall be preserved for a period of not less than two years. Whoever is assessed as incompetent in food safety administration shall not hold the relevant position (Article 7);
3. examining the food operation permits of online catering service providers, registering the information such as online catering service providers' names and addresses and legal representatives or persons in charge and their contact information, and ensuring the operation places and other licensing

¹² Article 25 specifying online purchase for official sampling was officially treated as the mystery shopping mechanism in China – See Xiao and Luo, 2017.

information specified on the food operation permits of online catering service providers are true (Article 8).

4. conducting random inspections and monitoring of the operations of online catering service providers (Article 14).

In addition to platform obligations, the Online Catering Services Measures imposes upon online catering service providers obligations relating to food preparation, among other things (Articles 18-20).

As illustrated, the above framework involves all actors of the online food chain, from online food business operators including online catering services providers to third-party platforms. Importantly, food e-commerce regulation is centred on platform regulation. In Chinese law, third-party platforms are indeed considered a vital legal actor in the food supply chain – not quite food business operators though (Xiao, 2018) – called upon to engage in affirmative steps towards the one regulatory priority, i.e. food safety (Sun and Buijs, 2018). More particularly, online intermediaries permitting third-party sales on their platforms (in other words, third-party platforms) are required to regulate and monitor their own channel, along with national competent authorities, as part of a co-governance relationship between private stakeholders and public bodies (Xiao, 2018). The idea is that online intermediaries engaged in food e-commerce become (co) rule makers to ensure industry compliance from third-party producers and traders using their channels. As the above analyses revealed, it seems that third-party platforms are obliged to conduct inspections and monitor the business operation therein to some extent (Article 14, para. 1 of the Online Food Safety Measures; Article 14 of the Online Catering Services Measures). Though the aforementioned China's E-commerce Law does not impose general monitoring obligations upon the platforms as intermediaries, it seems that **proactive monitoring obligations are imposed upon food e-commerce platforms under certain circumstances in China.**

Digital access

As a final note on government policies to improve digital access, the attention paid to rural e-commerce, illustrated at the beginning of this section, does not only come from the industry but is part of a larger government plan towards rural revitalization and digital development. In particular, in 2019 the Chinese Central Cyberspace Affairs Commission and the Ministry of Agriculture and Rural Affairs Information Commission adopted the *Development Plan for Digital Agriculture and Rural Areas (2019-2025)* to accelerate the development of precision agriculture and rural production and administration, smart management services, and rural government digitization. The goal of the Government of China has been to overcome the numerous challenges faced by the development of digital technologies in agricultural areas, including the digital divide between rural regions and cities. According to the Development Plan, infrastructure and equipment deployment has improved considerably: "over 98% of villages now have fiber optic connections or 4G, achieving the 13th Five-Year Plan targets ahead of schedule, with 94% of low-income villages connected to broadband internet. There are 29.2 computers and 246.1 mobile phones per 100 households in rural areas" (Part I (1)). The development of digital infrastructure to improve user penetration and *Internet of Things* access capability is also part of the *Outline of the 14th Five-Year Plan (2021-2025) for National Economic and Social Development and Vision 2035 of the People's Republic of China* (Chapter 11, Part I).

3.2.4. European Union

Food e-commerce context

The European Union is considered one of the largest e-commerce markets in the world, registering a constant rise in online purchases since 2007 (specifically, the EU population buying online grew from 50 percent in

2007 to 68 percent in 2017) (European Commission, 2018a). Similarly to most geographical areas worldwide, the COVID-19 pandemic has fast-forwarded this development, ensuring EU consumers continued access to essential supplies amid lockdowns and social restrictions (Lone and Weltevreden, 2022). While the e-commerce surge impacted all EU countries, the percentage of internet users who availed themselves of e-commerce channels varied considerably across the European Union during the pandemic, ranging from 42 percent of internet users in Bulgaria to 94 percent in the Kingdom of the Netherlands. A large majority of online purchases made by EU consumers are typically domestic, as in from sellers based in the same country as buyers. However, a portion of consumers are also keen on buying from other EU countries or outside the European Union, especially those falling under the 16–24 age group (Eurostat, 2023).

This development of e-commerce has revolutionized food retail as well. In 2021, deliveries from restaurants, fast-food chains, and catering services were among the European Union's most popular online purchases, following clothes and accessories (Eurostat, 2023). Internet sales of groceries and fresh produce also spiked in the last couple of years, both from large supermarket chains and local stores (such as neighbourhood green grocers and butchers) (Duthoit, 2021). Even as Europe emerges from the pandemic, though, this trend is expected to continue and have a long-lasting impact, as EU consumers have become more familiar with buying through popular e-commerce channels and online delivery platforms (e.g. Amazon, Carrefour, Conad, Leclerc, Auchan, Hello Fresh, Deliveroo and Glovo) (AAFC, 2022).

EU regulation and policies relevant to food e-commerce

As the European Union is one of the largest e-commerce markets in the world, the European Union legislator took it upon itself to respond to the challenges of the digital age through a renewed and quite extensive regulatory package, focusing on ensuring the safest environment for online consumers and building an accountability framework for online platforms. This is coupled with existing consumer provisions on distance contracts and unfair commercial practices as well as food safety laws. Together with China, the European Union is the only framework analysed in this study that provides rules specific to food e-commerce (in particular, on food information and food controls).

E-commerce/internet regulation

In recent years, the rapid development of digital services and the fight against the widespread exchange of illegal content online have been at the heart of EU digital agenda. More specifically, EU regulators have been intended to adapt existing rules to the rising challenges of the new digital age, including in terms of online platforms' accountability and consumer protection online.

Since 2000, internet regulation has been dominated by *Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')*. The goal of the Directive on electronic commerce was to remove all obstacles to cross-border online services in the European Union, especially through the recognition of contracts concluded via electronic means and the establishment of an immunity regime for providers of information society services. The latter are defined by Article 1(2) of *Directive 98/34/EC*, as amended by *Directive 98/48/EC*, as "any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services". The expression "by electronic means" alludes to data sent and received entirely by wire, radio, optical means, or other electromagnetic ways. Recital 18 of the Directive on electronic commerce further clarifies that information society services span a wide range of economic activities carried out online, including selling goods on the internet. However, it is also specified that the physical delivery of products and, generally, the provision of services offline are not included in the scope of the Directive. As mentioned, the Directive on electronic commerce regulates online platforms' immunity (also known as safe harbour), by defining the circumstances under which an information society service

provider will be exempt from liability for the unlawful content communicated by a third party (Laidlaw, 2012). In particular, Article 14 provides for liability immunity conditions for hosting service providers, that is, businesses that supply a service consisting of the storage of information provided by a recipient of the service, including online marketplaces and social networks (European Commission, 2017b). These platforms are considered immune from liability for third parties' illegal content provided that: 1) they do not have actual knowledge of the illegal activity or information and as regards claims for damages, are not aware of facts or circumstances from which the illegal activity or information is apparent; and 2) upon obtaining such knowledge or awareness, they remove or disable access to the illegal material expeditiously. It is important to note that such exemptions are only applicable to hosting service providers engaged in activities "of a mere technical, automatic and passive nature, which implies that the [...] provider has neither knowledge of nor control over the information which is transmitted or stored". That is to say, immunity covers mere online intermediaries with no knowledge nor control of the content exchanged by third parties (Recital 42). The Directive on electronic commerce provides for one additional protection of online platforms: Member States are in fact prevented from imposing upon information society service providers a general obligation to monitor the information stored or transmitted or to actively seek facts and circumstances indicating illegal activities (Article 15). Recital 47 specifies that this only refers to monitoring obligations of a general nature and "does not concern monitoring obligations in a specific case and, in particular, does not affect orders by national authorities in accordance with national legislation".

While the legal framework illustrated above remains the cornerstone of digital regulation in the European Union, it has been significantly integrated by a new set of rules included in the *Digital Services Act* (DSA) of 2022. This Act seeks to create a safer digital space for all users, by building a more effective consumer protection system online and establishing a transparent accountability framework for online platforms. The rules specified in the DSA affect online platforms offering their services in the single market, whether they are established in the European Union or outside. Online platforms are defined, for the first time in an EU harmonized legislative instrument, as "a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and technical reasons, cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of this Regulation" (Article 3(i)). In particular, the DSA sets out an innovative framework for the accountability of online platforms regarding illegal content, defined as any material or information that breaches European Union law or the law of a Member State "irrespective of the precise subject matter or nature of that law" (Article 3(h)). Interestingly, this framework does not follow a one-size-fits-all model as the DSA provides a list of obligations and responsibilities adjusted to platforms' size, role and impact in the online ecosystem, following the principle "the greater the size, the greater the responsibilities of online platforms" (European Commission, 2022).

The DSA defines intermediary services in Article 3(g) as either: (i) a 'mere conduit' service, consisting of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network; (ii) a 'caching' service, consisting of the transmission in a communication network of information provided by a recipient of the service, involving the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients upon their request; or (iii) a 'hosting' service, consisting of the storage of information provided by, and at the request of, a recipient of the service. As a brief overview, all providers of intermediary services have, *inter alia*, the obligation to establish a single point of contact to facilitate direct communication with Member States' authorities and the European Commission (Article 11); the obligation to designate a legal representative in the European Union for providers not established in any Member State, but offering their services in the European Union (Article 13); the obligation to set out in their contractual terms any restrictions that they may impose on

the use of their services, including information on content moderation policies, procedures, and tools such as algorithmic decision-making and human review (Article 14); and transparency reporting obligations in relation to the removal and the disabling of information considered illegal or contrary to their terms and conditions (Article 15). In addition to the obligations illustrated above, providers of hosting services are asked to put in place mechanisms allowing third parties to notify the presence of alleged illegal content (Article 16). Further, extra responsibilities are imposed upon all online platforms, except for micro or small enterprises. These extra obligations include to: provide an internal complaint-handling system as regards to the decisions concerning alleged illegal content incompatible with terms and conditions (Article 20); engage with certified out-of-court dispute settlement bodies to resolve disputes with users (Article 21); and inform competent enforcement authorities in the event they become aware of any information giving rise to a suspicion of serious criminal offences involving a threat to the life or safety of persons (Article 18). Online platforms are also required to organize their online interface in a way that enables traders to respect EU consumer and product safety law (Article 31) and to publish reports on their activities relating to the removal and the disabling of information considered to be illegal or contrary to their terms and conditions (Article 15). Lastly, very large online platforms, i.e. platforms supplying their services to a number of average monthly active recipients in the European Union equal to or higher than 45 million (10 percent of the total EU population), are subject to an additional set of obligations (Article 33). They are required to, *inter alia*, conduct risk assessments on the systemic risks related to the functioning of their services (Article 34), take reasonable and effective measures aimed at mitigating these risks (Article 35), allow for independent audits (Article 37) and appoint one or more compliance officers to ensure compliance with the obligations laid down in the DSA (Article 41) (Lattanzi, 2022).

While the DSA calls for platforms' enhanced binding responsibilities towards online safety, the legislative framework does maintain the safe harbour regime put in place by the Directive on electronic commerce. More specifically, the DSA echoes the wording used by Articles 14 and 15 of the Directive on electronic commerce as regards, respectively, liability immunity for hosting providers (Chapter II of the DSA) and no general monitoring or active fact-finding obligations (Article 8 of the DSA). Interestingly, though, the new rules provide for immunity exceptions, which testify to the mission of EU legislators to strengthen consumer protection online: indeed, platforms' safe harbour does not apply "with respect to the liability under consumer protection law of online platforms that allow consumers to conclude distance contracts with traders, where such an online platform presents the specific item of information or otherwise enables the specific transaction at issue in a way that would lead an average and reasonably well-informed consumer to believe that the information, or the product or service that is the object of the transaction, is provided either by the online platform itself or by a recipient of the service who is acting under its authority or control" (Article 6(3)). This addition seeks to cover situations in which online intermediaries (such as large online marketplaces) are involved in the selling and/or delivery operations in such a way that average consumers reasonably believe that products are bought directly from the platform and not from the third-party trader. The DSA also clarifies that potential voluntary initiatives launched by platforms to ensure compliance on their channels (self-checks, automatic detection and removal mechanisms of illegal content for instance) do not exclude them, *per se*, from liability immunity (Article 7).

On a final note, given the cross-border nature of online services, the DSA provides that the primary national authorities designated by Member States for supervising and enforcing the application of the Regulation – i.e. the Digital Services Coordinators – should cooperate and be able to participate, on a permanent or temporary basis, in joint oversight and investigation activities (such as coordinated data gathering) (Recital 110). In particular, where a Digital Services Coordinator from a Member State has reasons to suspect that an infringement was perpetrated by a provider of an intermediary service not falling under the jurisdiction of the Member State concerned, it must request the Digital Services Coordinator of the Member State where the provider of the intermediary service is established to assess the matter and take the necessary investigatory and enforcement measures to ensure compliance (Article 57).

Consumer protection regulation

In its mission to protect consumers in the digital age, the EU legislator has also enacted rules focusing on certain features typical of online shopping: online reviews and rankings. Specifically, [*Directive \(EU\) 2019/2161 on better enforcement and modernisation of Union consumer protection rules*](#) has amended the core of EU consumer protection law – [*Directive 93/13/EEC on unfair terms in consumer contracts*](#), [*Directive 2005/29/EC on unfair commercial practices*](#), [*Directive 98/6/EC on product pricing*](#) and [*Directive 2011/83/EU on consumer rights*](#) – through a series of innovative measures in favour of (online) consumers (Durovic, 2020).

Under Directive (EU) 2019/2161, traders must inform consumers whether procedures are in place to ensure that the published reviews actually originate from previous consumers who have truly used or purchased the product. When these procedures are in fact established, information must also include the manner in which checks are made and reviews are managed (for instance, whether those reviews have been sponsored or influenced by a contractual relationship with a trader) (Recital 47; Article 3(4)). In addition, traders are prohibited from submitting fake consumer reviews or manipulating them, such as publishing only positive reviews and deleting the negative ones (Recital 49). Following the amendments of Directive (EU) 2019/2161, it is now considered to be an unfair commercial practice – under Directive 2005/29/EC on unfair commercial practices – not only to submit or commission others to submit false consumer reviews or endorsements or to manipulate such reviews but also to mislead consumers by stating that reviews of a product were submitted by consumers who actually used or purchased that product when no reasonable and proportionate steps were taken to ensure that this is accurate. Such steps could include technical means to verify the reliability of the person posting a review (Recital 47; Article 3(7)). Directive (EU) 2019/2161 also deals with online ranking, meaning “the relative prominence of the offers of traders or the relevance given to search results as presented, organised or communicated by providers of online search functionality, including resulting from the use of algorithmic sequencing, rating or review mechanisms, visual highlights, or other saliency tools, or combinations thereof” (Recital 19). First, traders are required to inform consumers about the default main parameters determining the order of online offers (Recitals 22, 23, 26). Second, traders are prohibited from supplying consumers with search results in response to the latter’s online search query without clearly informing them that higher ranking of a particular product is the result of paid advertising or indirect payment (Article 3(7)).

[*Regulation \(EU\) 2019/1150 on promoting fairness and transparency for business users of online intermediation services*](#) (known as Platform-to-Business (P2B) Regulation) also pays attention to online ranking. While the primary purpose of the P2B Regulation is to protect business users against online platforms’ unfair practices, it indirectly enriches online consumers’ toolbox when using e-commerce channels. In particular, online intermediaries are obliged to outline the main parameters determining ranking in their terms and conditions, as well as inform business users of any possibility to actively influence such ranking against remuneration (Recitals 24-27, Article 5). Online platforms that sell their own products in addition to acting as online intermediary to third-party traders should also be transparent about any different treatment they might give to their own offers (Recital 30).

Apart from these newly established rules specific to online activities, EU consumers are obviously covered by general consumer protection rules. These include Directive 2011/83/EU on consumer rights and Directive 2005/29/EC on unfair commercial practices, mentioned above. Directive 2011/83/EU applies to any contract, including distance contracts, concluded between a consumer and a trader – that is, any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting for purposes relating to their trade, business, craft or profession. Distance contracts are defined as “any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded” (Article 2(7)).

Thus, contracts concluded via online platforms are well within the scope of this legislative instrument. Before consumers conclude any distance contract, they are protected by a series of information requirements imposed upon traders (Article 6), for e.g. on the goods, the identity of the trader, the payment, the duration of the contract, and the right of withdrawal. Such information should be provided in a way appropriate to the means of distance communication used in plain and intelligible language (Article 8). Consumers bound by a distance contract also have 14 days to withdraw from it, even after delivery of the product. Such period extends to 12 months in case traders have omitted to inform consumers on the right of withdrawal (Articles 9-15). However, as explained in Section 2.2 of this study, the right of withdrawal unlikely applies to internet sales of food due to high perishability, hygiene, and safety exceptions. Indeed, Article 16 excludes the possibility of withdrawal in case of “goods which are liable to deteriorate or expire rapidly” and “sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery.” Directive 2005/29/EC on unfair commercial practices establishes a single general prohibition of those unfair business-to-consumer commercial practices distorting consumers’ economic behaviour (Recital 11). Unfair commercial practices include misleading actions or omissions (such as the use of deceiving or false information) (Articles 6-7; Annex I) and aggressive marketing techniques to influence consumer choices (such as the use of harassment, coercion, and undue influence) (Article 9; Annex I). In December 2021, the European Commission adopted a revised *Commission Notice on the interpretation and application of the unfair commercial practices*, which replaces the previous guidance from 2016. The Commission Notice provides legal interpretation on key topics including, *inter alia*, obligations of online platforms and marketplaces. It is clarified that online platforms typically provide infrastructure and enable/facilitate interactions between suppliers and users for the provision of goods, services, digital content, and information online. Their business models range from merely allowing users to look for information supplied by third parties, to directly enabling contractual transactions between third-party traders and consumers. Further, the Commission Notice reminds that platforms may also advertise and sell, in their own name, different kinds of products. Thus, Directive 2005/29/EC on unfair commercial practices applies to both the commercial practices of the platform and of the traders using the platform to promote their products, to the consumers. Given that the Directive 2005/29/EC only covers business-to-consumers scenarios, the first step in assessing its application to an online platform should be to evaluate whether the latter qualifies as a “trader” or “acting in the name of or on behalf of a trader” under Article 2(b). This may be the case where a platform charges a commission on the transactions between suppliers and users, provides additional paid services or draws revenues from targeted advertising (para. 4.2.1). The second step requires to check whether users qualify as consumers. Once this is ascertained, online platforms are subject to the obligations laid down by Directive 2005/29/EC, including transparency requirements pursuant to Articles 6 and 7 and professional diligence according to Article 5.

Food regulation

The core of EU food law lies in *Regulation (EC) 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* (also known as EU General Food Law). The EU General Food Law establishes common principles and responsibilities to ensure a high level of health and consumer protection in relation to food. It is applicable to all stages of the food chain, from production to distribution, except for activities of primary production, preparation, handling and storage of food for private domestic consumption (Article 1). Food imported into the European Union “for placing on the market” must comply with the relevant requirements of food law or conditions recognized by the European Union to be at least equivalent (Article 11).¹³ The primary goal of the EU General Food Law is food safety. To determine whether any food is unsafe, i.e. injurious to

¹³ Note that in the EU legal framework, importers are those businesses bringing food into the European Union from third countries, that is, any country that is not a member of the European Union or the European Economic Area – European Free Trade Association (namely, Iceland, Liechtenstein, Norway). See Food Standards Agency UK, 2016b.

human health or unfit for human consumption, attention should be paid to its normal conditions of use as well as to the information accompanying it (Article 14). In this regard, according to the EU General Food Law, food rules should in fact enable consumers to make informed choices in relation to the foods they consume and prevent, among others, fraudulent or deceptive practices (Article 8). More specifically, the labelling, advertising and presentation of food products (including their shape, appearance or packaging, the manner in which they are arranged and the setting in which they are displayed) and “the information which is made available about them through whatever medium” must not mislead consumers (Article 16). As for the allocation of responsibilities, food law obligations fall upon all operators of food businesses, defined as any “undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food” (Article 3(2)). Food business operators (FBOs) are indeed any natural or legal persons responsible for ensuring and verifying that the requirements of food law are met within the food business under their control (Articles 3(3) and 17). The phases of production, processing and distribution of food are further specified as covering any stage, including import, from and including the primary production of a food, up to and including its storage, transport, sale or supply to the final consumer (Article 3(16)). The EU General Food Law obligations include: setting up traceability mechanisms which allow food business operators to identify any person from whom and to whom they supply food or substances intended to be incorporated into food, and to provide that information to competent authorities on demand (Article 18); withdrawing from the market or recalling from consumers, food believed to be non-compliant with food safety requirements; and informing and collaborating with competent authorities in case of food safety risks (Article 19).

Notably, as regards the position of online intermediaries in the definitional system of the EU General Food Law, the European Commission clarified that “online platforms that act solely as third-party service providers are not considered FBOs operating online, since they never own or/and physically handle the product. These are considered as information society service providers under the EU’s Directive 2000/31/EC [...] These service providers are not obliged to take action until they are informed of any non-compliant offers made available by third parties via their platforms” (European Commission, 2018a, p. 12). Consequently, a more direct role in one or more stages of the food chain (for instance, storage, transport and delivery of products to the final consumer) would lead – arguably – to online platforms being considered FBOs and thus falling within the ambit of EU food safety requirements.¹⁴

As illustrated above, information amounts to one of the criteria to measure food safety in the system laid down by the EU General Food Law (Giuffrida, 2018). The importance of food consumers’ right to know is testified by one of the European Union’s most recent food law codifications: *Regulation (EU) 1169/2011 on the provision of food information to consumers* (FIC). The FIC establishes the general principles, requirements and responsibilities governing food information, and in particular food labelling. Food information is defined broadly, as all the “information concerning a food and made available to the final consumer by means of a label, other accompanying material, or any other means including modern technology tools or verbal communication” (Article 2(2)(a)). The Regulation applies to food business operators at all stages of the food chain, where their activities concern the provision of food information to consumers (Article 1). More specifically, responsibility for the presence and accuracy of food information is imposed upon the operator under whose name or business name the food is marketed, or if that operator is not established in the European Union, the importer into the European Union market. However, food business operators which do not affect food information are still prohibited from supplying food which they know or presume, on the basis of the information in their possession as professionals, to be in violation of applicable laws

¹⁴ Recent EU case law focused on providing specific criteria (creation of a supply of services, decisive influence, and main component) to distinguish between mere online intermediaries and platforms engaged, involved in or in control over the main (physical) service delivered to users. For more information, see *Asociación Profesional Elite Taxi v. Uber Systems Spain SL*; *Uber France SAS*; *AIRBNB Ireland UC*; *Star Taxi App SRL v Unitatea Administrativ Teritorială Municipiului București prin Primar General, Consiliul General al Municipiului București*.

(Article 8). The FIC requires, among others: access to non-misleading, clear, and accurate food information (Article 7); use of a language easily understood by consumers of the Member State where the food is marketed (Article 15); use of minimum font sizes to ensure legibility (Article 13(2) and Annex IV); and mandatory food information details, including for non-prepackaged food (such as meals offered in restaurants) (Articles 9-10).

As regards internet sales of food, Recital 27 specifies that “in order to ensure the provision of food information, it is necessary to consider all ways of supplying food to consumers, including selling food by means of distance communication. Although it is clear that any food supplied through distance selling should meet the same information requirements as food sold in shops, it is necessary to clarify that in such cases the relevant mandatory food information should also be available before the purchase is concluded”. Article 14 further dictates that all mandatory food information must be made available before the transaction is concluded when pre-packaged food is offered for sale by means of distance communication, except for details related to the date of minimum durability or “use by” date. Such mandatory food information must appear on the material supporting the distance selling or be provided through other appropriate means clearly identified by the FBO without supplementary costs (for instance, webpage of the offer). At the moment of delivery, consumers must have access to all mandatory particulars, including the date of minimum durability or “use by” date. As for non-prepackaged foods sold by means of distance communication, the only food information requirement under EU law relates to the indication of any ingredient causing allergies or intolerances, both prior to the purchase and upon delivery. As for the actor responsible for food information, the FIC does not provide for a clarification specific to food e-commerce. However, in its Q&A notice on the application of the Regulation, the European Commission has specified that when foods are offered for sale by means of distance selling, “the responsibility for providing mandatory food information before the purchase is concluded lies with the owner of the website” (European Commission, 2013; Vaqué, 2013).

As for food controls, the European Union enforcement framework has recently been renewed with the entry into force of *Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products* (Official Controls Regulation – OCR). The new Regulation entitles competent authorities to carry out official controls on all operators at all stages of production, processing, distribution and use of animals, goods, substances, materials or objects that are governed by agri-food chain rules. To facilitate enforcement, these operators need to provide competent authorities with updated information on their name, the specific activities they carry out, including activities undertaken by means of distance communication (such as internet sales), and the places under their control (Article 15(5)). During official controls, they are also asked to cooperate with competent authorities and give them access to premises, documents, goods, as well as computers (Article 15(1)). As for the scope of the OCR, it should be highlighted that official controls do not merely apply to FBOs as defined by the EU General Food Law but more generally to any “operator” as “any natural or legal person subject to one or more of the obligations provided for in the rules referred to in Article 1(2)” (Article 3(29)).¹⁵ Thus, the obligations should cover all operators directly dealing with the production and distribution of food, as well as anyone involved in food safety, human health, consumers’ interests and information, animal health, plant protection against harmful organisms, or genetically modified organisms (GMOs). Plus, considering that food law applies to products sold via the internet in the same way as to conventional sales (i.e. via markets, bricks-and-mortar stores, catalogues, etc.), the European Commission has clarified that controls of food e-commerce must be performed in accordance with the OCR rules as well (European Commission, 2017c).

¹⁵ See also van der Meulen, 2019.

Under the OCR, enforcement powers include: "...(c) order treatments on goods, the alteration of labels or corrective information to be provided to consumers; ... (e) order the operator to increase the frequency of own controls; ... (g) order the recall, withdrawal, removal and destruction of goods; (h) order the isolation or closure, for an appropriate period of time, of all or part of the business of the operator concerned. ...; ... (j) order the suspension or withdrawal of the registration or approval of the establishment, plant, holding or means of transport concerned. ...;" and as a noteworthy addition adjusted to internet sales of food "... (i) order the cessation for an appropriate period of time of all or part of the activities of the operator concerned and, where relevant, of the internet sites it operates or employs" (Article 138).

Another provision relevant to food e-commerce is Article 36, according to which competent authorities now have the legal basis to engage in mystery shopping for the purposes of official controls and order samples of products offered for sale by means of distance communication without identifying themselves. The OCR also allows competent authorities to give access to information about the rating of individual operators based on the outcome of official controls, so that consumers may be aware of the degree of compliance of the business they engage with (Recital 39, Article 11(3)). The new rules also pay attention to consumer participation by asking national authorities to set up reporting mechanisms enabling notification of and follow-up on alleged infringements (Article 140).

On a final note, it should be reminded that under EU law all food business operators are required to complete a registration process with national authorities, to allow the efficient implementation and performance of food official controls (Recital 19 and Article 6 of [Regulation \(EC\) 852/2004 on the hygiene of foodstuffs](#)). More specifically, in its Overview Report on a series of fact-finding missions concerning food e-commerce (illustrated in Section 2.2 of this study), the European Commission clarified that FBOs involved in online activities which include handling and/or ownership of food must be registered or approved accordingly (European Commission, 2018a). This also includes food transport and delivery services: the fact that a business sells some or all of its products online has no implications on its registration or approval for the purposes of Regulation (EC) 852/2004 and [Regulation \(EC\) 853/2004](#), the latter laying down the legal framework specific to hygiene rules for food of animal origin.

Geo-blocking

In 2018, the EU legislator enacted [Regulation \(EU\) 2018/302 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market](#). The Regulation applies to business-to-business and business-to-consumer cross-border transactions within the European Union and thus does not cover purely internal situations, where all the relevant elements of the transaction are confined within one single Member State (Article 1(2)). Online marketplaces are subject to these provisions where they act as traders. Where their role is that of a mere intermediary, i.e. when they act in the name of or on behalf of another company that qualifies as a trader, it is the other company that is subject to the rules of the Regulation, and not the online marketplace directly (European Commission, 2018b). The Regulation on geo-blocking seeks to prevent geo-blocking, which refers to restrictive or discriminatory practices performed by online traders based on customers' nationality, residence or place of establishment. For instance, these include situations where customers from or based in a different Member State do not have access to a certain website or are unable to finalize the purchase for no justifiable reason (European Commission, 2018b). The new legal framework dictates a general prohibition to use technological measures to block or limit customers' access to the trader's online interface or to redirect customers without their consent to a different version of the website for reasons related to the customer's nationality, place of residence or place of establishment (Article 3), as well as a general obligation to provide the same treatment to all EU customers in similar situations, regardless of their nationality, place of residence or place of establishment. Three specific scenarios are defined as unjustified geo-blocking: the sale of goods without physical delivery to be performed by the trader; the sale

of electronically supplied services; and the sale of services provided in a specific physical location (Article 4). The Regulation also provides for a principle of non-discrimination of payment for reasons related to a customer's nationality, place of residence or place of establishment, the location of the payment account, the place of establishment of the payment service provider, or the place of issue of the payment instrument within the European Union (Article 5).

3.2.5. Indonesia

Food e-commerce context

Fourth most populous nation in the world and first in the Association of Southeast Asian Nations (ASEAN),¹⁶ Indonesia is one of the largest e-commerce markets in the Asia-Pacific area, including in the food and drink category. Internet sales of food amounted to USD 1.8 billion in 2021, representing 42 percent of the market share in the region and registering a compound annual growth rate (CAGR) of 64.4 percent in the period 2017-2021 (AAFC, 2022). While food e-commerce was a phenomenon already known in pre-pandemic Indonesia, COVID-19 has clearly accelerated its development, also thanks to key e-commerce actors such as Tokopedia and Shopee (Bank Indonesia, 2020). Food e-commerce growth is also due to the recent expansion of the online Indonesian community: the number of internet users grew at a CAGR of 16 percent from 2017 to 2021, amounting to 55.6 percent of the total population (compared to 32.3 percent in 2017). The portion of households having access to the internet also experienced a surge from 2017 to 2021, representing now 76.7 percent of total households (compared to 57.3 percent in 2017) and expected to reach 83.2 percent in 2026 (AAFC, 2022). However, there are still issues connected to the digital divide between more technologically advanced cities and rural areas (USDA, 2023).

National regulation and policies relevant to food e-commerce

The Indonesian legislator has taken regulatory action regarding e-commerce activities and actors involved in online trade, including by providing rules on platforms' safe harbour in case of illegal content online. However no specific provision on distance contracts or online channels seems to be present when it comes to consumer law or food regulation in Indonesia.

E-commerce/internet regulation

E-commerce regulation in Indonesia is scattered among a number of laws and regulations, the prevailing ones being *Government Regulation No. 80 of 2019 on Trade through the Electronic System* (GR 80/2019) and *Ministry of Trade Regulation No. 50 of 2020 on Provisions on Business Licensing, Advertising, Guidance, and Supervision of Business Activities in Trade Through Electronic Systems* (MoT 50/2020). Both these regulations implement the *Law of the Republic of Indonesia No. 7 of 2014 concerning Trade* (Trade Law 7/2014), and specifically Article 66,¹⁷ as part of the Government's efforts to encourage e-commerce transactions and promote Indonesia 4.0 (Makarim and Taira S., 2019). Other relevant rules are included in the *Minister of Communication and Informatics Regulation No. 5 of 2020 on Private Electronic System Operators* (MoCI 5/2020).

Both the GR 80/2019 and the MoT 50/2020 refer to three categories of e-commerce business actors: 1) merchants, who conduct business activities (i.e. make offers) – for commercial purposes and on a continuous basis – through either their own electronic systems or that of an e-commerce operator; 2) e-commerce providers, that supply electronic and/or communication services to facilitate e-commerce

¹⁶ The ASEAN union is made up of 10 Member States in Southeast Asia (Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam).

¹⁷ Article 66 of the Indonesia Trade Law: "Further provisions on trade transactions through Electronic Systems regulated by or under Government Regulation."

transactions (including marketplace operators and price comparison websites); and 3) intermediary service operators, that provide mere intermediary or indirect electronic communication services between senders and recipients to support e-commerce activities (such as search engines) (Articles 1(10), 1(11), 1(12)). Merchants involved in e-commerce activities through their own electronic system (No. 1 above) are also considered e-commerce providers (No. 2 above), thus they are subject to a dual set of obligations (Makarim and Taira S., 2019). All e-commerce business actors encompass natural or legal persons, both national and foreign, the latter being any individual or business entity incorporated and located outside the Indonesian territory and carrying business activities in Indonesia.

As for the series of obligations applicable to e-commerce transactions, these include, among others:

- Business licensing: all e-commerce business actors, whether domestic or foreign, are required to obtain a business license. Intermediary service operators may benefit from an exemption if they are not direct beneficiaries of an e-commerce transaction, or they are not directly involved in an e-commerce contractual relation with the parties involved (Endahayu, C. *et al.* 2019) (see Article 15 of GR 80/2019; more details are contained in Articles 1(15), 1(16) and Article 4 of MoT 50/2020).
- Registration: all e-commerce providers, whether domestic or foreign, are required to register with the Ministry of Communication and Informatics (Article 2 of MoCI 5/2020).
- Legal representative: foreign e-commerce providers are required to appoint or establish a trade representative office in the Indonesian territory if, within a period of one year, they have concluded more than 1 000 transactions with and/or delivered more than 1 000 packages to Indonesia-based consumers (Article 15 of MoT 50/2020).
- Contact information for complaints: all e-commerce providers must supply contact details of the consumer complaint service (Article 26(3)(f) of MoT 50/2020).
- Consumer protection: all e-commerce business actors have the obligation to protect the rights and interests of consumers in accordance with rules on consumer protection (Article 26 of GR 80/2019).
- Record keeping: all e-commerce providers, whether domestic or foreign, need to maintain information on financial transactions for a period of 10 years. Retention of other data, e.g. customers, payment, complaints, is required for a period of 5 years (Article 25 of GR 80/2019).
- Information: all e-commerce offers must contain a list of information details such as the specification of goods and services; their price; the terms of the agreement; payment and delivery mechanisms and limitations of liability (Article 39 of the GR 80/2019).
- Cross-border operations: all e-commerce providers engaged in cross-border activities must comply with the provisions of the laws and regulations governing exports and imports (Article 9(2) of GR 80/2019).

The GR 80/2019 also provides for platform's safe harbour in case of illegal content online. More specifically, domestic and foreign e-commerce providers as well as intermediary service operators are deemed responsible for the impact or legal consequences of illegal electronic information content except where they act quickly to remove such information after obtaining knowledge or awareness and where that content has not been initiated or modified by them (Article 22). This provision follows [*Circular Letter No. 6/2016 of the Minister of Communications and Informatics concerning Limitations and Responsibilities of Platform Providers and Electronic Commerce Merchant \(Safe harbour\)*](#), which stressed the importance of finding a balance between platforms' responsibility to provide a safe and reliable electronic system and the abuse of users conducting unlawful activities.

Furthermore, [*Law No. 19/2016 on the Amendment to Law No. 11/2008 on Electronic Information and Transactions*](#) lays down additional rules relevant to online activities. Apart from provisions relating to defamation and

the right to be forgotten online, the Amendment Law incorporates rules strengthening the role of public authorities against harmful content. The Government has now a duty to monitor and prevent violations online as well as the right to terminate access (or order an electronic system provider to terminate access) to online content that infringes applicable laws and regulations (Hadiputranto, Hadinoto and Partners, 2016).

Consumer protection regulation

As mentioned, Indonesia e-commerce law requires e-commerce business actors to comply with applicable rules on consumer protection. These are mostly covered by the *Act on Consumer Protection (No. 8 of 1999)*, which applies to all goods and services supplied to consumers. More specifically, the Act focuses on transactions between a consumer – defined as “anybody using goods and/or services which are available in the community, both for his own purpose, for the purpose of his family and other people as well as other living creatures and which are not to be traded” – and a business agent – defined as “any individual or business company, either in the form of legal entities or otherwise, set up and domiciled or undertaking activities in the jurisdiction of the state of the Republic of Indonesia, both individually and jointly through agreements on the running of business activities in various economic areas” (Article 1(2)–1(3)). The Act lays down a comprehensive collection of consumer rights, including: the right to safety in using goods; the right to correct, clear, and honest information about the condition and guarantee of the goods; the right to complain about goods; and the right to obtain compensation or refund in case of non-conforming goods (Article 4). Correspondingly, the Act forces business agents to adopt a responsible behaviour towards fairness, health, and safety of consumers. First, business agents must guarantee the quality of the goods; give compensation or refund for the losses deriving from the goods; and provide correct, clear and honest information about the condition and guarantee of the goods (Article 7). Second, they are prohibited to trade goods which do not conform with what is indicated on the label or description accompanying them; or do not mention the expiration date or the period of best use; or do not comply with the provisions on production in a manner permitted by the religion as stated by the word “halal”; or do not mention the required information in the Indonesian language. Similarly, business agents are prohibited from providing incorrect, misleading, and false statements about the goods (Articles 9-11, 17). Standard clauses – which are imposed unilaterally upon consumers – transferring the responsibility of the business agent or enabling them to reject the return of the goods already purchased by consumers are also not acceptable (Article 18).

Food regulation

The *Law on Food No. 18 of 2012* (Food Law 18/2012) is the Indonesian *lex generalis* for matters related to food, including food safety, labelling and advertising, imports, controls, and enforcement. Food safety is defined as “a condition and effort that is required to prevent food from biological, chemical and physical contaminant that can interfere, harm, and endanger the human health as well as not conflicting with religion, belief and culture of the society therefore safe for consumption” (Article 1(5)). Food safety should be implemented in an integrated manner, all along the food chain: implementation responsibility falls upon “farmers, fishers, fish farmers and food business operators” (Article 68 (1)). The FBOs are defined as “any person that is engaged in one or more food agribusiness subsystems, including supplier of production input, production process, processing, marketing, trading and supporting” (Article 1(39)). Specifically, any person involved in the food chain is required to control food risks and guarantee food safety and quality, including persons engaged in food production, storage, transport or distribution (Articles 71, 86, 88). Infringements may be sanctioned with fines; temporary suspension from activity; food recall from market; compensation; and/or license revocation (Article 72).

Chapter VIII of the Food Law 18/2012 deals with labelling, which aims to provide true, clear, correct and non-misleading information, in Indonesian, “about every food product that is packed before food is purchased and/or consumed”, including information related to the product name, origin, safety, quality, marketing

authorization number for processed products, name and address of the producer or importer, Halal marking (if required),¹⁸ and nutrition value. Information should be made available clearly and explicitly, so that it is easily understood by the public (Articles 96–97, 100). However, information details are not required for non-prepackaged foods (Article 98). Administrative sanctions for food labelling violations include: fines; temporary suspension from activity; food recall; compensation; and/or license revocation (Article 102). Rules on food safety and labelling are also included in secondary pieces of law such as the [Government Regulation No. 86/2019 on food safety](#); the [Government Regulation No. 69/1999 on food labels and advertisements](#); and the [Food and Drug Advisory Agency \[Badan Pengawas Obat dan Makanan \(BPOM\)\] Regulation No. 20/2021 on Processed Food Labels](#). Specifically, under Regulation 69/1999, food labels are defined as “any information concerning food in the form of pictures, writing, combinations of both or other shapes which are put on, put into, stuck to, or constitute part of packages of food” (Article 1(3)). Therefore, Indonesian food information law does not seem to take into consideration formats other than labels for pre-packaged foods.

As for food controls, according to Food Law 18/2012, government authorities are competent to organize monitoring, evaluation, and control programmes periodically for production, processing, storage, distribution, and transport activities conducted by FBOs, including inspections of products, premises, documents and business licenses (Articles 108–112). All processed food in retail packaging (both domestically produced and imported) must obtain BPOM registration approval prior to sale and distribution, as specified by [BPOM Regulation No. 23/2023 on process food registration](#). Imports of small quantities for personal consumption, *inter alia*, should be exempted from registration requirements (USDA, 2024).

More specifically on food imports, defined as the entering of food from a foreign or external source to customs territory of the Republic of Indonesia (Article 1(25) of Food Law 18/2012), these must satisfy safety, quality, nutrition and expiry limit requirements as well as not conflict with religion, belief and culture (Articles 37, 38, 93). Each commodity requires specific licenses and permits to enter the Indonesian territory (USDA, 2024). In particular, in 2023 the Ministry of Trade introduced [Regulation No. 36 of 2023 on Import Policies and Arrangements](#) (MoT 36/2023), which replaced previous rules on import for various types of goods. MoT 36/2023 regulates basic import licenses and business licenses required before the arrival of any imported goods through customs, the validity of these licenses and the application process applicable to them, the criteria according to which some goods need further verification and inspection as well as certain exemptions from licensing (e.g. imports conducted for reasons other than business purposes) (Buditomo, 2022).

Notwithstanding the recent enactment of most Indonesian laws and regulations on matters related to food, it appears that no provision addresses food e-commerce or distance sales in general.

3.2.6. Nigeria

Food e-commerce context

Compared to other geographical areas, the Near East and Africa regions have been relatively shy in adopting e-commerce models over the years, but the COVID-19 pandemic has disrupted consumer behaviours, especially as regards groceries, personal care, and household supplies. While online food delivery services have certainly seen a significant increase in the last couple of years, transition to online channels has not been easy due to the lack of digital resources and the difficulty to cater to high volumes of groceries (Exarchos *et al.*, 2020).

However, focusing on Nigerian food e-commerce, latest data show that in the first year of the pandemic, e-commerce of food and personal care experienced the largest growth among different categories of

¹⁸ Mandatory halal certification and labelling requirements are provided by Law No. 6/2023 (Article 48), which amended Law No. 33/2014 on Halal Product Assurance.

products (fashion, toys, furniture, electronics, accommodation and travel). Internet sales of food (and personal care products) has increased significantly and the value of the Nigerian online food delivery market amounted to USD 936.5 million in 2023. Prospectively, the [Nigerian online food delivery market](#) is expected to grow 10.7 percent (CAGR) in the period 2024-2032 (IMARC Group, 2023). This expansion may be explained by the impact of the COVID-19 pandemic on consumer eating habits and the growing consumption of ready-to-eat and fast-food products, but also by the rising levels of urbanization, the growing penetration of the internet (Nigeria accounts for 29 percent of Africa's total internet usage [Mabika, V. and Ogu, E.C. 2022]) and the increasing sales of smartphones in the country (IMARC Group, 2023). Some of the major players in the Nigerian e-commerce ecosystem include Jumia and Konga. Both founded in Lagos in 2012, they are now dominating online shopping in the country. Jumia Food, in particular, was launched in 2013 and has now penetrated several other African markets, including Algeria, Ghana, Tunisia, Senegal, Côte d'Ivoire, Kenya and Morocco. The meal ordering branch of Konga, Konga Food, on the other hand, was just inaugurated in May 2022 (Food Business Africa, 2022). A number of other online platforms involved in food e-commerce have emerged in recent years, such as Buyfood Africa, Ni fries, Chopnownow, and FoodStantly (Okunola, 2021; IMARC Group, 2023).

National regulation and policies relevant to food e-commerce

Similarly to all the jurisdictions analysed in this study, the Nigerian legal framework includes rules focusing on online platforms and online safety. However, these are not tailored to food trade. Likewise, food laws and consumer protection regulation, while present, do not provide for measures specific to the protection of food consumers involved in internet sales.

E-commerce/internet regulation

While there are no specific rules concerning food e-commerce in Nigeria, a number of regulations and guidelines bear relevance to online businesses. The 2020 [Companies and Allied Matters Act](#) lays down rules for the incorporation, registration and organization of companies, including those carrying activities online (Aderibigbe *et al.*, 2021). In particular, any company doing business in Nigeria must register with the Corporate Affairs Commission (Articles 35–37). Foreign companies intended to operate in Nigeria must first obtain incorporation as a separate entity in the country for that purpose (Articles 54–60). Online businesses must also complete a registration process with the Nigerian Information Technology Development Agency (Opemuti, 2020) following the Agency's [Guidelines for Registration of ICT Service Providers/Contractors for Delivery of IT Services to MDAS](#), established under the 2007 [National Information Technology Development Agency \(NITDA\) Act](#).

In September 2022, the NITDA also approved a [Code of Practice for interactive computer service platforms/internet intermediaries](#), which puts forward a set of best practices towards safety and legal compliance online, i.e. a series of measures to combat online harm and adopt a co-regulatory approach towards compliance in the digital ecosystem. The Code of Practice covers all interactive computer service platforms/internet intermediaries, including entities that are their subsidiaries, affiliates, and agents in Nigeria. Interactive computer service platforms are defined as “any electronic medium or site where services are provided by means of a computer resource and on-demand and where users create, upload, share, disseminate, modify, or access information, including websites that provide reviews, and gaming platforms”. Internet intermediaries include, but are not limited to, “social media operators, websites, blogs, media sharing websites, online discussion forums, streaming platforms, and other similar oriented intermediaries where services are either enabled or provided and transactions are conducted and where users can create, read, engage, upload, share, disseminate, modify, or access information.” The Code of Practice prescribes a series of obligations upon interactive computer service platforms and internet intermediaries: abide by Nigerian laws and not deploy or modify their platform in any way that will undermine or interfere with the

application and/or enforcement of the law; assist competent authorities expeditiously, upon receiving a court order, for the purposes of carrying out an investigation, combating cybercrimes, or prosecuting an offence; take down unlawful content within 48 hours upon notification from competent authorities or as soon as reasonably practicable when notification comes from a user; provide appeal mechanisms for users whose content has been removed; disclose the identity of the creator of information on their platform when directed to do so by a court order; exercise due diligence to prevent the uploading of unlawful content on their platform (where due diligence can be proved, platforms may not be held liable for the unlawful content found on their channels); provide a dedicated channel for competent authorities to lodge requests related to harmful or unlawful content; and provide a complaint resolution mechanism for users to lodge complaints. Platforms also have the obligation to: make easily available the terms of usage of their services; inform users not to share harmful, false, or misleading content; conduct a risk assessment to determine and mitigate harmful content, upon receiving a notice; regularly inform users that access to and use of the platform are subject to compliance with rules and regulations (it should be specified that non-compliance may lead to disabling access to the platform); and file an annual compliance report with the NITDA. Large platforms, i.e. interactive computer service platforms/internet intermediaries with more than 1 million registered users in Nigeria, must also be incorporated and have a physical contact address in the country, and establish human supervision on automated tools to strengthen accuracy and fairness.

The *Guidelines for the Provision of Internet Service*, published by the Nigerian Communications Commission pursuant to Section 70 of the 2003 *Nigerian Communications Act*, dictate that all licensees providing internet access services or any other internet protocol-based telecommunications services (internet service provider – ISP) must: ensure that users are informed of any statements of cybercrime prevention or acceptable internet use published by competent authorities, and that non-compliance may lead to criminal prosecution; cooperate with law enforcement and regulatory agencies investigating illegal activities, including by communicating information regarding particular users; and include a provision in their service agreements that permits the immediate disconnection, suspension or termination of a user's account, in case of unlawful activities conducted by such user (Sections 5-7). The ISPs are also asked to prominently display instructions regarding online safety on their home pages, including "(a) describing methods of controlling access to content, particularly any filters available for persons who wish to control access to content; (b) notifying users of their rights and obligations under applicable laws with respect to placing content on the Internet; and (c) informing end users of the procedures to follow for making a complaint regarding content" (Section 9). The Guidelines also address intermediaries' safe harbour (Section 11). Specifically, online hosting providers are immune from liability for the storage of information requested by a third-party user if they do not modify such information; do not interfere with any conditions of access applicable to such information; do not interfere with the lawful use of technology to obtain data on the use of such information; do not have knowledge of illegal activity related to such information; and act without delay to remove or disable access to such information upon receipt of a take-down notice. On this latter regard, all ISPs have indeed the obligation to put in place mechanisms for receiving and promptly responding to content-related complaints, including any notice to withdraw or disable access to identified content issued by competent authorities (Section 12).

Consumer protection regulation

Consumer rights are provided in the newly enacted *Federal Competition and Consumer Protection Act* of 2018, which repeals the previous *Consumer Protection Council Act* of 1992 (KPMG Advisory Services, 2019). These include, among others: the right to information in plain and understandable language (Article 114); the right to disclosure of prices for goods and services (Article 115); the right to non-misleading product labelling (Article 116); the right to obtain a written sales record with information details on the transaction, the goods and the undertaking (Article 118); the right to examine goods (Article 121); the right to return unsafe or defective goods and receive refund (Article 122); the right to fair, truthful, correct and non-misleading

marketing of goods (Article 123); and rights pertaining to the quality and safety of goods, including the right to receive goods compliant with any applicable standards set by industry sector regulators (Articles 130, 131). The 2018 Act also deals with the specific duties of manufacturers, importers, distributors, and suppliers of goods such as the duty to properly label goods to ensure traceability (Article 134) and to notify consumers of any hazard deriving from the good and ensure withdrawal from the market (Article 135). Liability for damages is imposed upon the supplier of the goods (Articles 136, 137). According to the findings, the Act does not provide for rules specific to the protection of consumers involved in e-commerce transactions (KPMG Advisory Services, 2019).

Food regulation

The *Food Safety and Quality Bill, 2019* – which was finally passed into law by the Nigerian National Assembly in December 2022 – establishes the regulatory framework to ensure food safety in Nigeria, define obligations of FBOs in that regard and lay down the general principles of food official controls. It applies to commercial activities concerning the safety of food affecting the health of consumers, and particularly to all stages of production, processing, preparation, packaging, storage, and distribution of food undertaken in the course of a food business (Article 1). A food business is defined as “any undertaking, whether for profit or not and whether carried out by a public or private sector operator, which undertakes production, processing, storage and distribution of food, whether in the formal or informal sector but excluding activities which are of an exclusively domestic or private nature” (Article 57). The Bill uses the same wording as the EU General Food Law of 2002 as regards the requirements for food safety (illustrated in Section 3.2.4 of this legislative study). Specifically, it upholds the prohibition of placing on the market unsafe food and echoes the same criteria to determine such unsafety (i.e. normal conditions of use of the food and the information accompanying it) (Article 9). Operators are obliged to register the establishment from which they carry out their activities before starting any food business and communicate any changes such as transfer, cessation, or suspension of business (Article 13).¹⁹

Responsibilities imposed upon FBOs also include recall and communication obligations in case a food is considered unsafe (Article 17); traceability requirements (Article 18); and standards for food labelling (which should be in English, not mislead, nor attribute the property of preventing, treating or curing a human disease) (Article 19). The term labelling is defined broadly as “any written, printed or graphic matter that is present on the label, accompanies the food, or is displayed near the food, including that for the purpose of promoting its sale or disposal” (Article 57).

In addition, Part VII focuses on official controls for food safety and quality. Competent authorities may conduct inspections (on all stages of the food chain, including distribution, retail trade and import), sampling, medical and hygiene examination of staff handling food and examination of records. These controls are carried according to an annual food safety control plan prepared by the competent authority, specifying the number and type of controls needed and the criteria applied in drawing up the programme. The relevant authority must also draft an annual report indicating the controls carried, the infringements identified, and the actions taken in case of non-compliance (Article 25). Imported food must satisfy all requirements dictated by the Bill and be subject to an official control and certification of compliance (Article 26). Notwithstanding the recent adoption of the Food Safety and Quality Bill in late 2022, it does not dictate rules tailored to internet sales of food (or more generally to distance sales).

Food safety requirements are also provided in the *Food and Drugs Act*, adopted in 1976 and last amended in 2004. Foods that are unfit for human consumption, unsafe, adulterated, unsanitary or poisonous cannot

¹⁹ According to the Processed Food Registration Regulations 2005, registration obligations do not only cover business establishments but also food products: “Every processed food manufactured, imported, exported, advertised, sold or distributed in Nigeria shall be registered in accordance with the provisions of these Regulations” (Article 1). The same requirement is included in Article 1 of the Food, Drugs and Related Products (Registration, etc.) Act, 1993 (amended 2004).

be sold, stored, or imported into the Nigerian market (Article 1). Misleading or false labelling, packaging, or advertising is also prohibited, including as regards food quality and safety (Article 5). Food imported or otherwise brought into Nigeria requires a document from the manufacturer certifying “that it was manufactured in accordance with any existing standard or code of practice pertaining to such product or, where such standard or code of practice does not exist for the particular product, in accordance with any international standard laid down, in the case of food, under the directive of the Codex Alimentarius Commission” (Article 8). The Act also establishes the powers of inspecting officers including those engaged in controls over food imports: “an inspecting officer shall have the right to examine any customs entries of any food, drug or cosmetic imported for use in Nigeria and for the purposes of analysis or examination thereof to take samples of any such food, drug, or cosmetic while still in any customs shed or government warehouse in Nigeria” (Article 13). Food controls fall under the responsibility of the National Agency for Food and Drug Administration and Control, established by the *National Agency for Food and Drug Administration and Control Act* of 1993.

Food labelling standards are further detailed in the *Pre-Packaged Food, Water and Ice (Labelling) Regulations 2018*. These Regulations include a list of mandatory information particulars to make available to consumers such as the name of the food; list of ingredients; net quantity; country of origin; manufacturing, expiration and best-before dates; registration number; storage conditions; and the name, address and contact information of the manufacturer, importer or distributor, as well as the certificate of registration holder for imported products and the principles they should follow. Among other obligations, food labelling must not be false, misleading, deceptive, or likely to create an erroneous impression regarding its identity, character, quality, quantity, composition or origin; must not contain medicinal claims; and must be clear, prominent and legible and use a contrasting colour to that of the background. No specific provision on food e-commerce labelling is dictated in the Regulations.

3.2.7. Overview of national/regional frameworks relevant to food e-commerce

As a general overview of the research findings, rules pertinent to food e-commerce are mostly found in e-commerce/internet, consumer protection, and food safety pieces of regulation. However, except for China and partially the European Union, no other national legal framework analysed in this paper contains mandatory provisions specific to internet sales of food.

Overview of e-commerce/internet regulation:

- All jurisdictions examined have either initiated discussions (Canada, Chile), or more importantly, adopted soft law or hard law instruments (Chile, China, European Union, Indonesia, Nigeria) addressing online platforms’ regulation and/or safety and legal compliance online.
- Where adopted, all laws or guidelines on platforms’ regulation introduce definitions of the various actors they apply to, often distinguishing between online traders and online intermediaries and occasionally accompanying definitions with examples from the digital ecosystem.
- Where adopted, laws or guidelines on platforms’ regulation put forward a set of obligations or best practices upon online actors. These generally include registration/licensing; compliance with applicable laws (imposed upon actors engaged in cross-border operations too); information; product safety and consumer protection; and cooperation with competent authorities against illegal content (including through the establishment of privileged contact points and legal representatives in the country for foreign companies).

- Laws or guidelines on platforms' regulation often focus on platforms' proactive role towards safety and compliance online through a series of preventive obligations or best practices: e.g. information and/or education of users towards compliance (China, European Union, Nigeria); and checks on businesses' licenses and information (China, European Union).
- Most frameworks (Chile, China, European Union, Indonesia, Nigeria) also deal with intermediary liability, often providing immunity on the conditions that online platforms: do not know of nor have control over the infringing content; take immediate action upon knowledge; and/or prove adequate preventive measures against such content. Some jurisdictions, such as China and Chile choose to limit the application of the intermediary liability immunity either by designing strict liability for intermediaries, such as Chile, or by devising joint liability for intermediaries like China.
- Laws or guidelines on platforms' regulation also call for user/consumer enhanced participation towards safety and legal compliance online, including through the setting up of effective complaints mechanisms; clear terms and conditions; appeal systems against content-moderation decisions; and/or ways to evaluate commodities provided on the platform.
- Two jurisdictions (European Union, Nigeria) lay down additional responsibilities for large online platforms such as conducting risk assessments or appointing compliance staff.
- Two jurisdictions (China, European Union) stressed the need to promote transnational cooperation and comprehensive supervision systems for cross-border e-commerce operations, given the inherently cross-border nature of the internet.
- Cross-border e-commerce (CBEC) attracts regulatory attention of quite a few jurisdictions (China, European Union and Indonesia). Whereas Indonesia requires CBEC to follow rules as specified in conventional imports and exports, China allows regulatory rules devised for CBEC deviated from pre-existing laws, being it tentative and experimental, though challenges remain.

Overview of consumer protection regulation:

- Most jurisdictions (except for Canada (federal)) that were examined include a general framework for consumer protection applicable also to food products, providing rights such as product safety and quality; compensation for defective products; and clear and truthful information on the goods and the transaction.
- Except for the Chilean, Chinese and European Union legal frameworks, no national law on consumer protection provided rules specific to internet/distance sales, including in regard to clarification on the legal status (and consequent responsibilities) of online actors within the existing framework.
- EU consumer rules addressing internet/distance sales focus on information and withdrawal rights as well as new features of online transactions (i.e. reviews and rankings). However, unless additional guidance is provided by the European Commission (especially on the term "trader"), it is not always clear where online platforms fit in the legal framework on consumer protection.
- Consumer law in Chile deals with the right of withdrawal from distance contracts, the information obligations imposed upon suppliers in electronic transactions as well as advertising on social media. Pursuant to both European Union and Chilean laws, the possibility to return food products after delivery seems inapplicable in most cases. Precisely, EU consumer law lists the following exemptions from the right of withdrawal in distance contracts: "goods which are liable to deteriorate or expire rapidly" and "sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery" (Article 16). Whereas Chilean law excludes goods for personal use or goods that, by their nature, cannot be returned or may deteriorate or expire quickly, China provides a partial exception, where e-commerce customers, including those purchasing non-

perishable commodities online, are entitled to return those commodities without reason within 7 days, except for fresh, live, or perishable commodities, and others unsuitable for return by nature.

- While right to redress is recognized in most jurisdictions, China introduces a punitive damages mechanism in its consumer laws to enforce the right to redress by allowing consumers to claim punitive damages, which has been further developed in China's food regulation and in turn has a profound impact upon its food e-commerce.

Overview of food regulation:

- All jurisdictions analysed provide for general mandatory rules on food safety, food controls, and food labelling. However, apart from China and the European Union, no other (hard law) framework that was examined covers internet sales of food directly.
- While all frameworks seem to apply to all stages of the food chain and often provide definitions of the food business operators they cover, it is still unclear in most cases (except for China and partially the European Union) where different types of online platforms stand – especially online intermediaries.
- Regarding food controls, all laws provide for registration/licensing requirements of food business operators or food products. Except for China and the European Union, rules on official controls seem tailored to physical inspections and do not indicate specific powers or measures adapted to internet sales of food.
- Food safety standards include requirements on food labelling. In most cases (except for Chile and Indonesia), food labels are defined broadly and apply, arguably, to food information displayed on webpages. More importantly, the recent adjustments to EU food information law and the development by Canadian authorities of voluntary guidelines on food labelling in an e-commerce context (as well as the work of Codex Alimentarius on the matter), are testimony to the primary role of information when it comes to ensuring food safety and protecting consumers involved in food e-commerce.
- EU food information law – as well as the guidelines proposed by Codex Alimentarius – exclude date marking (e.g. "use by" date, "best before" date, minimum durability) from the list of mandatory particulars to be provided to online consumers before purchase.
- While all food laws examined address food imports, no clarification could be found as regards potential specificities of cross-border food e-commerce (and specifically for food shipped for self-consumption through mail parcels). Two jurisdictions (Canada, Indonesia) provided for licensing/registration exemptions for food imported, exported, sent or conveyed for personal use, by an individual other than in the course of business, or for small quantities of food for personal consumption. One country (China) recently launched a government programme setting up a new business model for cross-border e-commerce and specifying relevant regulatory rules thereon.
- The EU adjustments to food e-commerce include limited rules on food information and food controls (mystery shopping; closure of websites). China has adopted a comprehensive framework on food e-commerce, laying down a set of obligations upon online actors, some of which are specific to online platforms.

Overview of identified gaps:

- Lack of or limited focus on cross-border operations within e-commerce/internet regulation (e.g. legal basis and systems for international cooperation and enforcement).
- Difficulties in locating online actors within consumer protection definitions (e.g. trader, supplier, distributor) and thus within the existing set of responsibilities.
- Inapplicability of consumer withdrawal rights in food e-commerce.

- Overall lack of or limited attention to online platforms as new actors of the food chain and thus ambiguity as regards their obligations within existing food laws (e.g. registration/licensing; food information; food safety).
- General lack of attention on the role that online platforms may/should play as regards food and consumer law enforcement (e.g. surveillance mechanisms; sanctions to infringing third-party online traders; guidance and assistance to business users and consumers).
- Focus on physical food control mechanisms which may not apply to food e-commerce (e.g. attention should be paid to checks on content online; mobility and anonymity of virtual traders; traders and intermediaries based abroad).
- Lack of or limited food enforcement measures that may prove more effective as regards food e-commerce (e.g. access restrictions to websites).
- Ambiguity as regards the applicability of food import formalities to international food e-commerce (e.g. cross-border shipments via mail).
- Food information requirements that do not pay attention to the needs of food e-commerce (e.g. date marking exceptions; lack of indication that information should be made available before purchase and upon delivery; unclear allocation of food information responsibilities upon online actors).

3.3. Private regulation

Private or self-regulation refers to a series of regulatory mechanisms put in place by private actors to govern their own actions and the relationship with entities with whom they come into contact. Self-governance is typically voluntary, as in initiated without being imposed by mandatory norms, even though it could be encouraged by non-binding nudges from public rule makers. In this sense, it is important that national governments create a regulatory or policy environment in which private actors involved in food e-commerce could develop ruling on their own to strengthen food safety online. As a general overview, private regulation ranges from the rules laid down by companies in their terms and conditions, through proactive initiatives of social responsibility, to voluntary agreements with other private entities or the government (this latter scenario falls under private/public co-regulation). In the digital ecosystem specifically, these self-regulatory mechanisms emerged as an alternative or integrative tool to compensate the legislative void or deficit that have mostly characterized internet regulation in the last twenty years. While some jurisdictions seem to have recently put into question this *laissez-faire* policy through the adoption of (or discussion on) binding instruments imposing obligations on online platforms, self-imposed rules and guidance continue to play a crucial role in internet governance (Winn, 2016).

3.3.1. Terms and conditions

The benefits of platforms' self-regulation ensue from the extensive knowledge and control they normally have – at technological, organizational, and contractual levels – over the environment they have created. Further, their superior contractual power over users puts them in the position to impose rules unilaterally and exclude those unable or unwilling to follow them. Indeed, online platforms' terms and conditions not only dictate governing provisions to manage user conducts but also establish measures and sanctions against infringements as part of platforms' self-enforcement. This self-governance is driven by platforms' need to ensure a safe and reliable digital environment, to maintain customer satisfaction and thus preserve loyalty to the platform. Compared to the rules established by public regulators, terms and conditions tend to be more flexible to adapt to the fast-pacing developments of digital technology and to the individual necessities of each online platform (Sun and Buijs, 2018).

As for online platforms involved in e-commerce operations, terms and conditions typically address a variety of regulatory topics such as intellectual property rights, refunds and returns, comments and reviews, applicable laws, access to accounts, payment, and limitations of liability.²⁰ Contractual rules usually include the obligation that all listings and products be safe and in compliance with applicable laws and that the website be used in a lawful, non-misleading, manner.²¹ Further, online platforms may dictate a range of standards and conditions for listing, packing, and shipping inventory.²² Moreover, online intermediaries tend to use terms and conditions to transfer liability upon third-party traders: in other words, contractual clauses typically remind that the platform in no way guarantees nor controls the safety and reliability of the content exchanged through its channels, shifting the responsibility for content compliance to online traders.²³ As regards food e-commerce specifically, online platforms' contractual terms may state that food should comply with all applicable food safety laws,²⁴ list a series of labelling and packaging requirements,²⁵ include guidance for perishable foods,²⁶ or prohibit certain food offers²⁷. Information requirements on meal delivery platforms are generally scarce, often limited to where to find clarification on allergens (usually by contacting the restaurant directly) and excluding liability of the online intermediary in that regard.²⁸ Moreover, online intermediaries tend to use terms and conditions to transfer liability upon third-party traders: in other words, contractual clauses typically remind that the platform in no way guarantees nor controls the safety and reliability of the content exchanged through its channels, shifting the responsibility for content compliance to online traders. As regards food e-commerce specifically, online platforms' contractual terms may state that food should comply with all applicable food safety laws, list a series of labelling and packaging requirements, include guidance for perishable foods, or prohibit certain food offers. Information requirements on meal delivery platforms are generally scarce, often limited to where to find clarification on allergens (usually by contacting the restaurant directly) and excluding liability of the online intermediary in that regard. As mentioned, terms and conditions also clarify the enforcement measures that the platform may take against users in case of non-compliance with applicable laws and contractual terms: e.g. selling bans in case of repeated failure to meet performance targets and food safety and quality standards; periodic audits to check cold chain compliance; and removal of selling privileges. More generally, sanctions that online intermediaries may impose on infringing traders include warnings, lower ratings, deletion of offers, removal of inventory stored in platforms' warehouses, payment withholding, account suspensions, restriction or disabling, and notices to relevant authorities (Lattanzi, 2022).²⁹

3.3.2. Social responsibility action

Online actors' self-governance also encompasses voluntary initiatives launched to enhance consumer protection and prevent infringements on their selling channels. As regards food e-commerce specifically, examples of proactive efforts taken by online platforms include steps to improve food safety and hygiene standards of their business partners. For instance, some platforms have created food safety guidelines to help both third-party traders using their channels and couriers.³⁰ Others have been active in preventing businesses with low food hygiene ratings from selling their food (e.g. displaying a link on the restaurant's individual page directing to the official rating's website managed by competent authorities; and conducting

²⁰ For examples of terms and conditions see Amazon, 2022; eBay, 2023; Alibaba, 2024; Jumia, 2024; Mercado Libre, 2024a; and Just Eat, 2023.

²¹ See Amazon Seller Central (UK), 2024a; Amazon Seller Central (Italy), 2024; Jumia, 2024; and Shopee (Indonesia), 2019.

²² See Amazon Services LLC (US), 2024a.

²³ See Amazon (global), 2022; and eBay, 2023.

²⁴ See Uber, 2024a.

²⁵ See Amazon Seller Central (UK), 2024b.

²⁶ See Alibaba, 2022.

²⁷ See Mercado Libre, 2024b.

²⁸ See Just Eat, 2023; and Deliveroo (Italy), 2024.

²⁹ See Mercado Libre, 2024c; and Deliveroo (Italy), 2024.

³⁰ See Uber, 2024b.

checks to remove zero-rated operators). Platforms have also taken the initiative to assist traders in raising their safety standards by making sure they have access to independent expert advice or by funding safety improvement programmes (McGlenn, 2019; Turner, 2018). Additional efforts focus on the use of algorithms and filtering technologies to prevent or detect infringing or unsafe material online. To name a few examples, Alibaba introduced a food-tracing system based on blockchain technology and QR codes product tagging (Makery, 2017) and launched a competition in search of new food safety digital solutions (Koe, 2019). Amazon's proactive food safety action includes a customer feedback monitoring system through which Amazon monitors and analyses millions of customers' comments every week, which are then leveraged to train predictive systems to proactively assure safety through machine learning tools. Amazon also works on engaging with customers on food safety education, to ensure the safety of the food they purchase online (e.g. using customer alerts to remind them to refrigerate chilled and frozen items when their order is placed and upon delivery) (Lupo, 2021). More generally, Amazon established a Brand Registry against the sale of counterfeit products, to protect users' registered content through an automated system (Amazon Services LLC (US), 2024b).

3.3.3. Voluntary agreements and codes of conduct

In recent years, online platforms have also worked on developing good practices towards food safety or more generally towards users' compliance and products' reliability. These codes of conduct are often part of non-binding agreements concluded with other private actors and/or public authorities, as part of self and co-governance strategies. In the United Kingdom of Great Britain and Northern Ireland for instance, three major meal delivery platforms – i.e. Just Eat, Deliveroo and Uber Eats – have come together through a newly proposed Food Safety Charter developed with the support of the Food Standards Agency. The Charter allows public bodies to activate co-regulatory options and ensure consumer protection with and through private actors. In particular, the three online platforms involved in this initiative have committed to join efforts towards four goals: 1) ensuring that traders selling food through their channels have completed registration with local authorities; 2) setting minimum food hygiene standards and introducing hygiene rating filters for consumers; 3) cooperating with the Food Standards Agency to use the platforms' communication channels and share information to support couriers and restaurant partners in meeting food safety and hygiene standards; and 4) working with restaurant partners and third-party groups to assist those with food hypersensitivities (Miles, 2022; Food Standards Agency UK, 2022). Other examples of platform–government collaboration include developing public guidelines to help online intermediaries with food businesses' onboarding so that queries related to online activities are directed to platforms instead of local authorities (Food Standards Agency UK, 2022).

Another case of co-governance between private and public entities is the collaboration between the Italian authority responsible for food quality (*Ispettorato Centrale della Tutela della Qualità e della Repressione Frodi dei Prodotti Agroalimentari* [ICQRF]) and notable online platforms involved in internet sales of food. In recent years, the ICQRF has indeed entered into agreements with Alibaba, Amazon, Rakuten and eBay, which allow competent authorities to intervene in a few hours on the platforms' e-commerce channels and obtain the prompt cancellation of infringing offers (ICQRF, 2019). In particular, this cooperation seeks to combat the exchange of fraudulent "Made in Italy" products, and especially deter offers of products that infringe Italian protected geographical indications and designations of origin (ICQRF, 2022). Thanks to these specific agreements, the ICQRF coordinates with various agri-food geographical indications protection consortia and major online players, and takes immediate action against misleading or fake offers referring to Italian quality products.

More generally on the protection of intellectual property rights on the internet, the [Memorandum of Understanding on the sale of counterfeit goods](#) provides an additional model of self-regulation supported

by public authorities. First put together in 2011 and later revised in 2016, this Memorandum is a voluntary agreement concluded between various brand owners and online platforms and facilitated by the European Commission to prevent offers of counterfeit goods from appearing on online marketplaces. Signatories of the Memorandum include major platforms such as Alibaba, Amazon Europe, eBay, Facebook Marketplace, OLX, Rakuten France and Vinted; fifteen right owners (e.g. Adidas, Apple, Philip Morris and Procter & Gamble); and several business associations (European Commission, 2024).³¹ The purpose of this initiative is to develop a code of practice against counterfeiting online as well as foster collaboration between all parties involved. As for the principles the online platforms commit to, these include: offering efficient and effective notice-and-take-down mechanisms, which should be accessible electronically, not burdensome, and simple to process; assessing notifications in an efficient and comprehensive manner, without undue delay; taking deterrent measures in relation to sellers; implementing proactive and preventive measures, including commercially and technically reasonable steps to request sellers' contact information and to verify this information in specific circumstances; publishing and enforcing intellectual property rights policies, which should be clearly indicated on their sites and reflected in the contracts concluded with sellers; sharing information to facilitate legal actions and investigations; providing consumers with appropriate means to identify and report offers of counterfeit goods; assisting consumers who unintentionally purchase counterfeit goods on their website; cooperating with customs authorities, border authorities, and law enforcement authorities. While the Memorandum centres on the protection of luxury brands, these principles build effective steps for platforms' pro-action against non-compliance online and may act as a model for future private regulatory projects seeking to improve legal compliance in food e-commerce.

³¹ The complete list of signatories dated 25 October 2023 may be found at: <https://ec.europa.eu/docsroom/documents/47395>.

4. Regulatory recommendations: options to address food e-commerce in national law

Most jurisdictions analysed so far have not enacted rules tailored to internet sales of food. However, considering the rapid development of food e-commerce and the growing debate over safety and compliance online, the time seems ripe for national rule makers to take regulatory action to address this phenomenon and its impact on food safety. Some of the innovations brought by food e-commerce might require adjustments, amendments, or integrations to applicable laws. Others might merely need clarification as to whether existing provisions apply to all or any category of new online actors. In fact, it might be assumed that what applies offline applies online too and that food e-commerce benefits from all the rules covering conventional food trade. However, the challenges raised by food e-commerce do require special attention and a possible rethinking of existing legal systems. Legislative action vigilant to this phenomenon would provide internet sales of food with an adequate set of powers, structures, requirements and guarantees. Thus, it would offer legal predictability to all actors involved, including enforcement authorities and online platforms. In particular, the latter are typically uncertain of their position as FBOs and therefore of their duties as regards the safety of food exchanged through their channels. Legal uncertainty and under-enforcement not only impair business development and fair competition but also and foremost, consumer protection.

In this context, it is unlikely that the challenges raised by food e-commerce could be tackled within one single piece of regulation. The recommendation is in fact that governments follow a multiple strategy approach, and thus introduce provisions in various existing frameworks, where available. These would mainly be related to food safety and food controls, consumer protection and/or internet regulation. These different regulatory areas do not act as water-tight compartments but should form an interdependent and interdisciplinary network of rules, aiming at guaranteeing food e-commerce safety from various angles, while maintaining legislative harmonization. It should be kept in mind that there might be overlap between certain regulatory options.

This section provides guidance for governments intending to develop options to regulate internet sales of food within national law. The regulatory aspects that may be considered relevant in this regard include the legal status of online actors; platforms' (intermediary) liability; enforcement mechanisms; standards for food information online; consumer protection and participation; coordination and empowerment of competent authorities, including public oversight on transnational operations; and the role of private regulation. Regulatory strategies addressing these topics should primarily aim at online safety and particularly at the safety and reliability of food products and information exchanged on e-commerce channels.

Options to address food e-commerce in national legislation should be open and adaptable, in line with the diverse, fluid and constantly evolving nature of online activities. General regulatory systems should provide a comprehensive framework applicable to all internet sales of food, without excluding particular types of businesses. At the same time, they should be flexible enough to accommodate new business arrangements and innovative digital technologies without having to promulgate amendments or new rules. To ensure technology-neutral baseline provisions, national legislators could work on different features of food e-commerce regulation such as the type of legal instrument chosen (e.g. overarching legislation rather than narrow, detailed, ruling to be left to implementing standards) or the legal status of various

actors covered by legislation (e.g. a comprehensive set of broad responsibilities to be progressively tailored to specific private players depending on their role, function and size).

National governments should also focus on establishing both proactive and reactive rules. Indeed, ensuring food safety on e-commerce channels not only depends on ex post measures and sanctions responding to food safety incidents but also, and primarily, on suitable mechanisms stopping food safety risks from occurring in the first place. Rather, considering the risks of unsafe food and inaccurate information online as well as the enforcement difficulties typical of e-commerce channels (anonymity, virtuality, mobility, cross-border nature), prevention is considered more effective and useful than compensatory/punitive remedies. In this sense, regulatory options should be shaped around preventive, possibly technological solutions, including information requirements; online platforms' duty of care; businesses' and consumers' education; and competent authorities' surveillance powers.

Finally, public action should envisage a coordinated effort with other stakeholders and thus be coupled with regulatory initiatives to be conducted with and/or by private entities. Private co- and self-ruling will indeed be necessary to bridge the gaps of public governance in e-commerce transactions, including operations involving parties based in different countries. Particularly, participation of online platforms in enforcement activities would support competent public bodies, who typically lack powers, resources and skills to effectively counter infringements online.

4.1. The legal status of new online actors

Novel digital mechanisms bring new entities in the food scene. As difficult as it may be to identify and define the various actors that populate the online food chain, it is advisable that national legislators start by distinguishing food e-commerce players, and clarifying the different terms that are of common use as regards internet sales of food (e.g. online traders, online platforms, e-commerce channels, online marketplaces). In particular, definitions should be developed in a broad enough manner to encompass the variety of business models followed by companies involved in or facilitating food e-commerce. At the same time, definitions should distinguish between distinct categories of actors with dissimilar functions (e.g. online traders selling food through their own website or via third-party online intermediary; mere online intermediaries acting as agents for third-party transactions; online platforms handling and shipping food on behalf of traders). It is advisable to introduce examples of online actors' typologies to facilitate the understanding of the wide range of economic activities falling under food e-commerce and reduce interpretative challenges due to the constantly evolving digital environment. These examples may be provided in recitals or interpretative guides accompanying the main legislative instrument.

Understandably, a definition is not an end in itself. Definitions help identify the regulatory role of the new players emerging in the digital food chain. Mindful that online intermediaries permitting third-party sales on their platform (as in third-party platforms) are legally treated as legal entities other than food business operators in some jurisdictions (e.g. China), whereas it is relatively unclear about how all actors involved in food e-commerce are interrelated in other jurisdictions (e.g. European Union), national law should first clear up which of the existing responsibilities apply to each category of actor, and especially whether and which online platforms fall within the legal regime of food business operators. Further, it should provide a well-defined set of responsibilities tailored to food e-commerce and allocate them to particular categories of online actors. Considering that the final goal of these definitions and clarifications is food safety, it is desirable to include the provisions on the legal status of online actors within the general food law framework or in a linked regulatory text.

In this context, governments may think of introducing any or all of the following obligations, which may be calibrated depending on the size and impact of online actors in the digital ecosystem:

Online traders and/or online intermediaries

- Obligation of online traders and/or online intermediaries – whether foreign or national – to register with food control authorities. Because small food vendors might often sell online in some geographical areas, registration exemptions should not apply to domestic informal food traders unless they engage in sporadic, small-value transactions.
- Obligation of online traders and/or online intermediaries to ensure traceability, including through new technological developments (e.g. blockchain).
- Obligation of online traders and/or online intermediaries to keep record of transactions.
- Duty of online traders and/or online intermediaries to collaborate with and report to competent authorities to prevent and address food safety risks (e.g. dedicated contact points; annual compliance report).

Online intermediaries

- Obligation of online intermediaries to conduct registration checks on third-party traders or to assess the reliability of the information provided by traders.
- Obligation of online intermediaries to offer guidance to business users and consumers or clearly outline their rights and obligations as regards food safety.
- Obligation of online intermediaries to take measures against infringers: withhold payments; take-down non-compliant offers; disable selling accounts; deny non-compliant foreign business users' access to the platform's services using geo-blocking technologies, among other measures.

Online traders

- Obligation of online traders to complete and display certification/rating schemes relating to certain food safety and hygiene aspects or to registration with competent authorities (e.g. use of official logos, trust marks or quality seals following successful completion of the certification process).

Online platforms

- Obligation of online platforms to clarify the status of each sale (i.e. whether they act as traders or facilitators of third-party traders) and the duties they have towards customers/consumers.
- Obligation of online platforms to conduct risk assessments, establish supervisory mechanisms, and activate food recalls.
- Obligation of online platforms to provide customers/consumers with adequate complaints mechanisms.
- Obligation of online platforms to put in place food compliance departments or appoint dedicated staff.
- Obligation of online platforms to guide, train and monitor packaging, storage and delivery staff as regards food safety and hygiene standards.

4.2. Liability of online actors

With the emergence of new online actors and new power dynamics, legal systems also need to identify the liability regime applicable to (food) e-commerce and especially clarify the allocation of liabilities and exemptions upon online intermediaries. On the one hand, online intermediaries may claim that they act as mere facilitators between traders and customers, not selling nor handling the food themselves, thus, they may argue that they should not be liable for the infringements performed by others. On the other hand, the typical intermediary immunity approach (i.e. safe harbour, which may still provide some benefits also in the field of food e-commerce), which might apply to neutral intermediaries, does not seem to respond to the real-life functioning and decisive influence of today's online platforms. Even when acting as intermediaries in third-party transactions, online platforms have acquired, in certain circumstances, extensive control over all stages of the business process, the users selling through their channels, and the content exchanged. Therefore, national governments are called upon to develop a liability regime that balances out the need to meet stringent (food) safety standards online and the need to promote digital innovation. Such a regime may be part of food regulation or internet regulation, where available.

In this context, national law should indicate precisely whether online intermediaries are liable (or jointly liable) for the unsafety or non-authenticity of (food) products exchanged through their channels or for the inaccuracy of the information displayed on their web portals, or whether such liability falls upon online traders or even producers. More specifically, national law should ensure that consumers may easily claim compensation or indemnification against clearly identified actors. For instance, should the law recognize the distributor as the person subject to liability claims, it is required that it be clarified whether online intermediaries or online platforms in general might be considered distributors. In this case, online intermediaries may be able to subsequently recover compensation from the actual violator (e.g. online trader, producer). Governments could also consider a default safe harbour to boost innovation while providing exemptions from intermediary immunity, particularly in the so-called "red flag" scenarios. For instance, immunity may be excluded where it can be proven that online platforms: 1) have not exercised adequate duty of care against infringements; 2) had knowledge or control over the infringements; and 3) have not immediately taken measures against violators upon notice.

More assertively, in jurisdictions where it would fit the overall legal framework, it would be possible to introduce enhanced liability mechanisms like strict liability and joint liability for intermediaries. In addition, **though a proactive general monitoring obligation is prohibited in many jurisdictions, enhanced monitoring obligations could be introduced in specific fields like food e-commerce. To sum up, though imposing general monitoring obligations upon intermediaries may still be sensitive and contestable, proactive and specific monitoring obligations/requirements may be assessed under certain circumstances, but further studies are needed.**

4.3. Monitoring and enforcement mechanisms

While monitoring and enforcement mechanisms laid down for physical trade generally apply to food e-commerce as well, there are certain control aspects related to internet sales of food that may call for specific adjustment.³² Indeed, there is the need to provide competent authorities with suitable surveillance powers and sanctions for non-compliance, including as regards cross-border operations. In particular, the

³² While this Section 4.3 discusses monitoring and enforcement obligations of the competent authority, Section 4.2 describes potential monitoring obligations of the intermediaries themselves.

framework of responsibilities imposed upon online actors – whether selling their own products, being mere intermediaries, or engaged in one or more stages of handling, packaging, and distributing third-party food – should be accompanied by effective and deterrent enforcement measures. These should take into account that physical inspections of premises, business documents or products may not always be feasible in food e-commerce. Indeed, traders may be based in a foreign country and not own any physical place of business in the country of destination (i.e. the country to which they direct their sales and ship their products and where consumers are finally located). They might also trade anonymously or easily deactivate their account once infringements are reported. Online intermediaries also may not have registered offices or agents in the country of destination. Moreover, food products may elude import formalities as they may be sent via courier as individual mail parcels.

In this sense, some of the monitoring activities in food e-commerce will likely be conducted online through virtual checks (e.g. controlling whether specific registration and information obligations have been fulfilled). Nevertheless, physical controls may still be possible where online traders or intermediaries carry all or part of their physical activities in the country (e.g. online platforms based across borders may own warehouses in the territory of the country of destination, which are used to stock and pack products before dispatch and final distribution). Purchases and sampling for the purposes of official controls are also part of the toolbox that competent authorities may utilize to ensure oversight on the physical composition and condition of food products exchanged online or on the actual match between the information shown on the online offer and the product delivered.

In this context, governments may incorporate the following solutions in national law and policy covering food controls:

- Governments should put in place mechanisms as well as allocate budget (and preferably provide a legal basis) that allow authorities to purchase and sample food products for the purposes of official controls without identifying themselves (i.e. mystery shopping).
- Registered online traders should be monitored on a risk-oriented basis, similar to that applied to conventional retailers.
- National laws should design an appropriate and feasible level of corrective and enforcement actions to be taken against infringements such as: initial advice on how to rectify the situation; downgrading the business' rating; closure of the online trader's business; removal or suspension of the online trader's and/or online intermediary's license; suspension of the intermediary's web portal in case of frequent infringements occurring through their platform; and fines imposed upon an online platform, adjusted to its size and turnover.
- Governments should provide a legal basis for robust recall protocols that clarify the role of online actors in that regard. For instance, platforms should have the obligation to prominently display recall notices on their websites and inform consumers who purchased the item.
- Online platforms should establish mechanisms allowing buyers to directly notify food safety infringements to authorities.

As regards international food e-commerce:

- Foreign online intermediaries and online traders should have a registered office or legal representative based in the country of destination. Smaller businesses could only be required to complete a registration process with national authorities.
- It should be clarified that food safety laws apply to food products also imported through e-commerce channels.

- National import laws should not exempt international food trade for personal consumption purposes from the scope of regular import requirements, formalities and controls.
- Online traders and/or online intermediaries should be required to notify cross-border internet sales of food to customs or other competent authorities, even for small quantities of products.
- National authorities should activate international cooperation and information sharing systems with foreign competent bodies, including coordinated control and enforcement actions on traders based in third countries.

4.4. Food information online

Those who purchase food through e-commerce channels usually have no means to assess a product before concluding the sale unless they are provided truthful, complete, and accurate information about its nature, quality, composition, and origin. In fact, in food e-commerce, buyers are required to conclude transactions and often complete payment before having the opportunity to examine the product in their hands. Plus, unlike most categories of goods purchased online, food, once delivered, may not be legally returnable for safety and hygiene reasons. Therefore, it is crucial that applicable laws guarantee suitable food information on the online offer, at the point of purchase and upon delivery, to counterbalance the risks of finalizing a purchase through online channels. The central role of information in food e-commerce regulation was testified by the recent hard law and soft law initiatives undertaken by the Codex Alimentarius Commission, Canada, and the European Union, illustrated in the previous sections of this study (3.1.1, 3.2.1, 3.2.4). An appropriate legal framework for food information in the digital age not only increases transparency and protects consumers' right to take informed decisions as regards the food they eat, but it also allows food control authorities to exercise effective surveillance on the food exchanged online.

Again, food e-commerce would mostly be covered by the same information standards and requirements as traditional food trade. However, national legal frameworks should pay special attention to the specificities of internet sales and ensure that food purchasers (mainly consumers) operating online have timely, easy, access to all information particulars needed to guarantee their right to knowledge and to make informed, safe, choices.

In particular, it would be important for national food laws to strengthen their provisions on food information online and particularly to:

- Provide a broad definition of food information, beyond mere physical labels attached to food packaging. This would encompass any mandatory or voluntary data, label, communication, image, word, or mark, accompanying food as well as any means used for conveying food-related information, including digital technology tools.
- Clarify that information requirements generally apply to all food transactions, including distance/ internet sales. In particular, food information should be made available in a truthful, accurate, non-misleading and timely manner.
- Specify that in internet sales of prepackaged and non-prepackaged food, information particulars should be available on the offer's webpage, before purchase, as well as at the moment of delivery, through appropriate means and regardless of payment or supplementary costs.
- Indicate which information particulars apply to internet sales of prepackaged food (e.g. packaged groceries) and non-prepackaged food (e.g. meals, fresh fruits and vegetables).

- State that information accompanying non-prepackaged food should at least include the list of allergens, both at the point of purchase and upon delivery (the latter through enclosed menus for instance).
- Lay down standards allowing food information to be clearly displayed, easily accessible, prominently visible, and legible on e-commerce channels (e.g. standards for language, font, size, placement of the information).
- Inform consumers whether and in which circumstances the right of withdrawal applies to internet sales of food.
- Identify new responsibilities for online actors to ensure, facilitate or verify the access to and readability, reliability and compliance of food information online, including through adequate technology.
- Clarify which (online) actor is responsible for providing food information online and who is liable in case such information is inaccurate, false, misleading or inaccessible.
- Encourage competent authorities to develop guidance for consumers, online traders, and online intermediaries as regards food information in the context of food e-commerce.

4.5. Consumer protection and participation

While food e-commerce may involve a buyer and a seller both operating within their business or profession, more often than not those who purchase food do so for personal consumption purposes. Therefore, internet sales of food are typically covered by consumer protection legislation. Rather, online consumers generally need enhanced protection against the risks posed by the inherent virtuality and anonymity of internet transactions, unlike consumers operating in the physical world, who at least have the ability to come into contact with bricks-and-mortar stores and physical products before purchase and payment.

National consumer law should provide (food) e-commerce with the same level of guarantees as physical transactions. Starting with the right of consumers – both online and offline – to receive safe products and accurate, complete and non-misleading information about the agreement, the product, and the business they interact with. Moreover, consumer law should contain strengthened provisions and remedies that address and accommodate the specificities of internet sales, including through a set of new responsibilities imposed upon online actors to prevent and stop behaviours non-compliant with consumer protection laws. In particular, national governments should incorporate consumer participation and communication strategies towards prevention and detection of infringing products exchanged through e-commerce channels.

As for cross-border e-commerce, national consumer law should be applicable to all offers directed to consumers based in the national territory. Several criteria may be used to ascertain whether an offer is in fact directed to national consumers, such as the use of a language and currency suitable for such consumers; the possibility for international shipment; the display of telephone numbers with an international code for customer service; and/or the existence of a registered office of the responsible legal entity located in the country.

Specifically, to provide a suitable framework for an effective consumer protection online, national rule makers are encouraged to take into consideration the following regulatory options:

- It is advisable that national laws introduce rules to protect consumers' right of withdrawal. If this right can be consolidated in the context of food e-commerce in one way or another, consumers of food e-commerce may be better regulated. This will be very much dependent on national laws.

- It is of equal importance to ensure consumers' right to redress. If this right can be consolidated in the context of food e-commerce in some way, consumers of food e-commerce may be better regulated. This will be very much dependent on national laws.
- Competent authorities should develop guidelines to assist consumers in conducting safe e-commerce operations.
- Competent authorities should establish reporting mechanisms enabling consumers' notification of and follow-up on alleged infringements online (e.g. government hotlines immediately connecting to consumer protection authorities – contact details or weblinks should be preferably displayed on the webpages of online platforms).
- Online platforms should have the legal obligation to protect the rights and interests of consumers using their channels and ensure and/or monitor product safety.
- Online intermediaries should inform traders about their consumer protection obligations and take necessary steps to ensure the veracity of the information submitted by them.
- Online platforms should ensure consumers' understanding of their rights and remedies.
- Online platforms should advise consumers to check products and the information accompanying them upon delivery as well as to report any irregularity.
- Information about the terms and conditions and all elements of the transaction (e.g. offer, product, delivery, instructions for use and storage, withdrawal, business contact details) should be displayed on e-commerce channels in a timely and prominent manner, before purchase. In particular, consumers should be informed about the exemptions from the right of withdrawal applicable to distance sales.
- Online platforms should ensure transparency and fairness as regards the use of artificial intelligence mechanisms and the functioning/management of online reviews and rankings.
- Online platforms should supply customer service and set up appropriate mechanisms allowing consumers to easily submit complaints about unsafe products or non-compliant offers.
- Online platforms should set up notice and recall systems in case of safety hazards. In particular, recall notices should be posted on the website or social media page from which the products were sold. Plus, online platforms should use consumers' contact details submitted during purchase to inform them of a recall.
- Consumer protection frameworks should include effective measures against infringements online. Where consumers purchase through online intermediaries allowing third-party sales on their platforms, consumers should be able to ask intermediaries for remedies, instead of, or along with online traders. In this case, online intermediaries may subsequently claim compensation from traders. Moreover, consumer protection violations by online traders would generally infringe the online intermediary's terms and conditions and thus constitute a breach of contract. Thus, online intermediaries may also ask or seek redress under contract law.
- Online platforms should have the obligation to cooperate with competent authorities, including through the establishment of contact points and reporting mechanisms.
- Intermediary immunity, where existing, should not be applicable to situations where online intermediaries are so strongly involved in the online order and delivery of the product to consumers that the latter are reasonably put under the impression that the sale is concluded by the online intermediary itself, and not the trader.

4.6. Public authorities

To develop effective legal strategies aiming at the highest level of food safety in e-commerce, national governments would need to ensure that competent authorities are provided with adequate tools to monitor and enforce applicable laws, taking into account the level of resources available. Public controls systems should be built around coordination and management of inspections and enforcement; education, guidance, and training; information sharing and multi-level collaboration.

As discussed in Section 4.3, food law frameworks generally empower control authorities to carry inspections on physical premises, products, staff, and documents. These mechanisms may also apply to control internet sales of food. National-based traders, whether they sell online or offline, typically have business premises located in the national territory and falling under the jurisdiction of competent authorities. The same goes for online intermediaries involved with packaging, storage, and physical delivery to the final consumer: for instance, food products are usually stored in and shipped from warehouses operating within the country, which should be subject to physical official controls. However, as already mentioned, physical inspections are not sufficient to guarantee proper oversight on food e-commerce activities, especially when it comes to transnational food e-commerce, where products are generally shipped via mail parcels directly to consumers' homes. In this context, empowerment of enforcement bodies is essential. National governments should supply competent authorities with the legal basis, policy and institutional frameworks, adequate technological infrastructures and appropriate investigative capabilities (obtained through trainings for instance) to carry food controls online. The measures empowered to competent authorities could include: identification of websites engaged in food e-commerce; controls of online offers; checks on registration/license obligations; anonymous purchases and sampling for control purposes (i.e. mystery shopping using non-identifiable contact details, delivery addresses and credit cards); and emergency procedures for specific hazards.

Another challenge for public authorities' empowerment is the development and implementation of an adequate set of measures to be taken once infringements are ascertained. Competent authorities should indeed be put in the position to take suitable corrective and enforcement actions, some of which may be similar to enforcement in conventional trade, while others should be tailored to the novelties of food e-commerce and the actors emerging within this phenomenon (see Section 4.3).

Enforcement in food e-commerce may engage all public bodies competent for food controls, consumer protection, import/customs, police, and possibly public postal services in order to effectively conduct market surveillance and strengthen deterrence. The potential involvement of several agencies calls for an appropriate framework which clarifies roles and responsibilities in a coordinated manner. In particular, competent authorities should be able to share information on non-compliant offers and infringing actors, and coordinate initiatives and countermeasures, to avoid delays, duplications of efforts and overlaps of functions. Coordination and overall guidance could be left within the competence of central/federal units while local authorities may conduct individual compliance checks on premises located within their territory and on a number of websites assigned to them. Other countries may decide to establish a special department at national level dedicated to monitoring food e-commerce. Another route that could be useful to gather information of food e-commerce, share experiences and identify best practices among various control authorities, is to organize fact-findings missions on selected websites or non-compliant products.

Importantly, given the cross-jurisdictional nature of internet sales, a robust and holistic approach to food e-commerce enforcement requires increased international cooperation between national/regional competent authorities to effectively control activities occurring in more than one country and possibly

sanction infringers located abroad. Thus, an international enforcement framework for food e-commerce calls for the development of a series of initiatives at various levels (local, national, regional/supranational) including: agreed joint protocols or working groups to exchange best practices; assistance and cooperation agreements for monitoring, investigation and enforcement with main trading partners; and systems for sharing intelligence and notifying infringements.

4.7. Private ruling as a regulatory strategy

Considering the unique features and challenges of food e-commerce, state regulation only may not be enough to ensure compliance online. As online platforms have emerged as key players of today's food chain, governance by platforms may play a vital role in achieving food safety on e-commerce channels, in a complementary and parallel manner to public ruling. Recognizing platforms' potential regulatory advantage due to their size, technological expertise, human resources, control over data, content and users, involvement in the activity conducted through their channels and economic powers, one of the options for internet regulation to be effective is indeed to encourage (through soft-law instruments) platforms' enhanced participation and commitment towards food safety. Self-regulation would not act as a substitute of public legislation and would not exempt public authorities from their role and responsibility towards food safety online. However, it would enable private actors to provide additional instruments towards that same purpose. In particular, self-regulation would allow platforms to develop flexible standards adjusted to their functioning and technological development while also reaching the goal of tackling unsafe food effectively, taking into account the challenges specific to internet sales, including in terms of cross-border enforcement.

Through codes of conducts, online platforms would pledge to positively influence compliance and improve consumer protection. In particular, the efforts towards safe internet sales of food would include setting out the actions that online actors voluntarily commit to in order to prevent food safety risks (*ex-ante* steps) as well as detect/deal with food safety incidents once they occur (*ex-post* steps). These actions would include:

- introducing supervisory mechanisms over food businesses trading on their channels (e.g. allowing only registered food traders to open a selling account; checking whether information supplied by business users is reliable);
- strengthening knowledge, awareness and guidance for both business users and consumers on how to engage safely and mindfully in food e-commerce;
- reminding business users of food safety rules applicable to them, including as regards food information online;
- putting in place technological solutions to improve consumers' visibility of food online traders (e.g. prominent display of hygiene ratings and quality seals) and consumers' participation in detecting and reporting food safety risks;
- communicating regularly on performance monitoring to allow data gathering on volume, types, and scale of food safety risks online (for instance through an annual report published on an open-access website);
- sharing information with competent authorities and other platforms engaged in similar activities as regards food safety risks and infringing traders;
- providing and implementing adequate and deterrent measures against infringements (e.g. suspension of selling privileges; deletion of accounts; withholding of payment);
- notifying customers of food safety risks and activating recall mechanisms;

- exploring the possibility of automatic systems for prevention, detection and removal of infringements using artificial intelligence, algorithms, blockchain and other innovative technologies;
- engaging in multi-stakeholder dialogue with other public/private players to exchange good practices and respond to challenges; and
- investing in staff trainings on how to prevent and address food safety risks.

Further, platforms' efforts towards food safety may involve other private entities (e.g. other online marketplaces; third-party traders; consumer associations; transport companies) and thus take the form of voluntary agreements committing to collaborative due diligence along the food chain. This multi-level private alliance would involve information and expertise sharing, collaboration in research and development, launch of investigative initiatives and/or implementation of enforcement measures. Compared to individual codes of conduct developed by one single online actor, participation of multiple stakeholders in the development and application of food safety standards and good practices would increase impartiality and transparency of private regulation and ensure that the interests of more than one party (e.g. business users, consumers and platforms' collaborators for instance) are equally respected. Moreover, given the inherent cross-border nature of food e-commerce, codes of conduct may arguably be even more effective towards food safety if they are laid down with the participation of international or regional trade/consumer associations.

Solutions involving private/public co-regulation may also be taken into consideration, especially as regards enforcement. In light of the challenges regulatory and control bodies encounter on e-commerce channels (e.g. anonymity, increased mobility, cross-border transactions), governments may choose to rely on co-regulatory schemes to improve food law compliance. In this scenario, public authorities and online platforms could commit to share the internet governance burden towards safe food e-commerce. For instance, public/private action may involve joint education programmes directed to online traders and consumers; open channels for communication and intelligence sharing; private risk assessments or inspection programmes conducted under the guidance or with the support of competent authorities; private standards laid down within a general framework or baseline criteria put down by the state regulator. Platforms may also commit to display, in an easily accessible manner, the direct links to the websites of public authorities responsible for consumer protection or food safety rating; this would facilitate consumers in sharing feedback with regulatory bodies, reporting infringements to competent authorities and receiving information on the reliability of a third-party trader. Governments could also guide major online platforms in opening a food safety fund dedicated to finding innovative solutions towards consumer protection and food safety on e-commerce channels (SFSA, 2019). Public/private cooperation may also take the format of good practices first initiated by private entities and later incorporated into public policies.

National governments exploring private regulation options should be aware of the benefits and weaknesses of this route. The benefits of private internet regulation, with or without public participation, derive from online actors' capacity to establish standards more rapidly and with a greater adaptability to digital development; stronger (insider) knowledge of the functioning and potential of e-commerce channels; effectiveness in enforcing food laws online; and increased flexibility to operate and apply ruling across borders. Platforms' regulation may also improve participation of all stakeholders involved through systems of notices-and-take-down and complaints' handling, and more generally dispute resolution mechanisms that tend to be less onerous and more effective than public judicial systems. Plus, self-governance may encourage businesses' duty of care and thus be in line with the goal of preventing food safety risks rather than addressing them *ex post* through state-imposed measures.

More specifically, the United Nations Conference on Trade and Development has identified the following strengths of self-regulation:

- Voluntary codes are flexible, easier to change than laws, and can fill regulatory gaps.

- Codes can promote good practices not just prevent bad practice.
- An industry may identify more closely with a code it has drafted itself and therefore more readily comply.
- A code is expected to go beyond simple legal compliance and so may be more innovative.
- Redress may be cheaper and faster.
- The cost of implementing a code is borne by industry itself.
- (UNCTAD, 2017)

Similar and additional advantages of private governance have been illustrated by the Organisation for Economic Cooperation and Development:

- possibility to go beyond legal requirements;
- more flexibility;
- capacity to fill regulatory gaps quickly;
- higher technical expertise;
- lower costs;
- higher compliance levels;
- enhanced competition; and
- possibility to conserve government resources and costs.
- (OECD, 2015)

However, national governments should acknowledge that voluntary private standards come with their own risks as well:

- They are not legally enforceable and may have weak compliance and oversight mechanisms.
- They may include vague commitments that do not go beyond what the law already dictates (UNCTAD, 2017).
- They may bring transparency and impartiality issues and unilaterally privilege the interests of online platforms over business users or consumers or the interests of dominant platforms over smaller ones.
- They may lack comprehensiveness with other codes or mandatory law and thus confuse consumers.
- Businesses may not be aware of private schemes.
- The costs borne by online actors for establishing self-regulatory mechanisms may be shifted to consumers (OECD, 2015).
- Enforcement measures taken unilaterally by online intermediaries may challenge traders' fundamental values such as due process and the right to conduct a business.

5. Conclusion

Although food e-commerce is an emerging reality across the globe, transforming shopping habits and business models, this phenomenon raises several challenges to regulatory and enforcement authorities. Market entry – and exit – in food e-commerce seem faster and less stringent than in traditional bricks-and-mortar trade, online traders are generally less tangible than stores, anonymity is made easier behind a screen, and control authorities have typically limited power to tackle infringements affecting consumers based nationally but carried by operators based abroad.

In this context, national regulation should be fit for purpose to ensure food safety and consumer protection online. Where national governments have not paid attention to internet sales of food as such, several existing frameworks may come in hand to address the questions posed by food e-commerce. These not only include well-established food safety and consumer protection laws but also recent interventions on the regulation of e-commerce or online platforms, where available. However, laws on general food, consumers, and the internet may not be sufficient and special attention may be required on certain regulatory elements. In particular, new actors of the food chain – *in primis* online platforms – need to know what their position and duties are or should be as regards food safety and the protection of consumer rights and health; food information should play a primary role in protecting consumers engaged in food e-commerce and be adapted to digital technologies; competent authorities should be trained in conducting surveillance online; private actors – especially online platforms – should have an active role in consumer protection and enforcement against infringers; and governments should encourage international cooperation and intelligence sharing. It is recommended that such national strategies deal with food e-commerce regulation in a holistic, multi-area manner, engaging competent bodies at various levels, and focusing on flexible options which prioritize prevention rather than reaction. Recent debates and legislative efforts on general online platforms' regulation – at least in the six selected jurisdictions examined – prove that the national legislator could be ready to question online platforms' *laissez faire, laissez passer* policy. The time seems ripe for food legal frameworks to pay attention to internet sales and online actors as well.

Understandably, and considering the inherent cross-border nature of food e-commerce, international guidance would encourage further transnational cooperation on the matter as well as provide great assistance to national governments seeking to develop or improve food e-commerce regulation within their jurisdiction. Private regulation may also prove greatly effective in ensuring food safety on e-commerce channels. In recent years, online platforms have in fact acquired a new function of rule makers (and enforcers) of their own digital ecosystem, rather than mere rule takers. This new function should not come as a surprise if we acknowledge the transformation that online actors have gone through in the last decade, starting from neutral online interfaces to becoming large (some titanic) ecosystems involved in, and in control of, all aspects of the operation.

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This legislative study examines the challenges of food e-commerce, particularly with regards to food safety and consumer protection, and looks at how – and first of all, if – different legal systems have addressed this phenomenon from a regulatory standpoint. Even if online trade of food has grown at an unprecedented speed in recent years, food e-commerce regulation – both international and national – has not necessarily followed the same pace. This legislative study identifies several recommendations to guide policy and rule makers in their mission to build effective regulatory mechanisms towards safety and compliance on food e-commerce channels. It suggests a multidisciplinary regulatory approach, integrating existing frameworks with new rules where necessary. Considering the inherent cross-border nature of food e-commerce and the extensive role of online platforms in today's economy, this study also focuses on the importance of international regulatory guidance and the involvement of private self- and co-regulatory schemes to complement national frameworks.

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