



UNIVERSITÀ DEGLI STUDI DI PADOVA

**DIPARTIMENTO DI AGRONOMIA ANIMALI ALIMENTI RISORSE
NATURALI E AMBIENTE**

DIPARTIMENTO DI MEDICINA ANIMALE, PRODUZIONI E SALUTE

Corso di laurea Magistrale in Scienze e Tecnologie Alimentari

**Practical and legal issues of official controls for
foods in distance selling**

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ANNO ACCADEMICO 2016/2017

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RIASSUNTO

L'e-commerce è una forma di mercato che prevede la vendita elettronica di beni e servizi. È una tipologia di commercio resa possibile dall'utilizzo di reti internet e che sta prendendo sempre più piede, espandendosi a tutti i settori di mercato, compreso quello agro-alimentare. La possibilità di vendere alimenti online richiede che l'e-commerce sia soggetto a specifiche legislazioni per garantire la sicurezza alimentare tra cui il Regolamento CE N° 178/2002. Tale regolamento garantisce la libera circolazione di alimenti sani e sicuri all'interno degli stati membri della Comunità Europea e identifica l'etichettatura come mezzo principale di comunicazione tra produttore e consumatore e come mezzo di tutela del consumatore. L'etichettatura permette al consumatore di compiere una scelta consapevole al momento dell'acquisto. Essa viene normata in maniera specifica dal regolamento EU 1169/2011 il quale ha anche un articolo dedicato all'etichettatura degli alimenti venduti attraverso la vendita a distanza, tra i quali rientrano anche gli alimenti venduti tramite e-commerce.

Lo scopo di questo elaborato è stato quello di avere un quadro completo sull'e-commerce nel settore alimentare italiano e capire come poter incrementare e migliorarne i controlli. Primariamente è stato analizzato l'articolo 14 del regolamento EU N° 1169/2011, relativo alla vendita a distanza, per capire quali informazioni debbano essere fornite ai consumatori nell'e-commerce. Si è poi indagato su quale fosse il turnover dell'e-commerce alimentare, sui suoi operatori, sui controlli ufficiali che vengono svolti e sulla normativa che li concerne. Infine è stata valutata la possibile applicazione di un software per l'analisi dei siti web come supporto ai controlli ufficiali che vengono svolti.

Dalla ricerca risulta che in Italia il settore dell'e-commerce sia maggiormente indirizzato verso i piccoli rivenditori piuttosto che le grandi catene o piattaforme di vendita (come invece avviene in altri stati Europei e Extraeuropei). Si può dunque definire come un settore con ancora un ampio margine di sviluppo. Per quanto riguarda i controlli ufficiali invece risulta che l'introduzione del regolamento UE N° 2017/625 relativo ai controlli ufficiali, che entrerà in vigore nel dicembre 2019 abrogando l'attuale regolamento CE N° 882/2004, introduce la possibilità di utilizzare come campioni anche i prodotti acquistati in maniera anonima attraverso lo shopping

online. Questa innovazione richiederà una modifica e un'implementazione dell'attuale legislazione riguardante il campionamento. Il possibile utilizzo del software come supporto alle operazioni di controllo è stato valutato positivamente. Le sue caratteristiche di automaticità e selettività lo rendono uno strumento flessibile in grado di accrescere non solo la precisione e l'accuratezza dei controlli ma anche la loro efficienza ed efficacia.

ABSTRACT

E-commerce is a form of market that involves the electronic sale of goods and services. It is a type of business made possible by the use of internet networks, which is expanding to all market sectors, including agri-food. The ability to sell online foods requires e-commerce be subject to specific legislation to ensure food security including Regulation EC No 178/2002. This Regulation guarantees the free circulation of wholesome and safe food within the EU Member States and identifies labeling as the main means of communication between producer and consumer and as a means of protecting the consumer. Labeling allows the consumer to make a conscious choice at the time of purchase. It is specifically regulated by EU Regulation 1169/2011, which also has an article dedicated to the labeling of food sold through distance selling, including foods sold through e-commerce.

The purpose of this paper is to have a complete picture of the e-commerce of the Italian food sector and understand how to increase and improve controls. Primarily, Article 14 of EU Regulation No. 1169/2011 on Distance Selling has been analyzed in order to understand what information should be provided to consumers in e-commerce. Secondly investigated is the turnover of food e-commerce, its operators, the official controls that are being carried out and the regulations that apply to them. Finally, it has been evaluated the possible application of software for website analysis as a support to the official controls that are being carried out.

The research shows that in Italy, the e-commerce sector is more geared towards small retailers rather than large chains or sales platforms (as in other European and non-European states). It can therefore be defined as a sector with still a large development margin. Regarding official controls, however, the introduction of EU Regulation 2017/625 on official controls, which will enter into force in December 2019 by repealing current Regulation EC No 882/2004, introduces the possibility of also using as sample products purchased anonymously through Mystery shopping. This innovation will require a modification and implementation of current sampling legislation. Possible use of software as support for control operations was evaluated positively. It's characteristic of automaticity and selectivity make it a flexible tool that not only enhances the precision and accuracy of the controls, but also their efficiency and effectiveness

1 INTRODUCTION

1.1 Introduction to the electronic commerce and its regulation

1.1.1 Short definition of trade and its subjects and objects

The Trade is the sale and purchase of products between sellers and consumers and it generates a purchase agreement.

A consumer is a natural person acting for purposes not related to business, commercial, trade or profession¹.

Seller is any natural or legal person, whether public or private, who, in the exercise of his or her business or professional activity, uses a purchase agreement.²

Products is any product intended for the consumer, even in the context of services. A product is considered such even when there is the possibility for it to be used by the consumer even when it was not directly intended, provided or made available for him.³

1.1.2 What is the electronic commerce

According to the Com (97) from the European Council n.157 of 1997 – A European Initiative in Electronic Commerce:

Electronic commerce is about doing business electronically. It is based on the electronic processing and transmission of data, including text, sound and video. It encompasses many diverse activities and involves:

- Products (consumer goods, specialized medical equipment)
- Services (information services, financial and legal services)
- Traditional activities (healthcare, education)
- New activities (virtual malls)

There are two types of activity that can be included in the meaning of electronic commerce:

¹ D. Lgs. 206/05, Articolo 3 comma 1 lettera a.

² D. Lgs. 206/05, Articolo 128, comma 2 lettera b.

³ D. Lgs. 206/05, Articolo 3, comma 1, lettera e.

- Indirect electronic commerce: electronic ordering of tangible goods, which still, must be physically delivered using traditional channels such as postal services or commercial couriers.
- Direct electronic commerce: the on-line ordering, payment and delivery of intangible goods and services such as computer software, entertainment content, or information services on a global scale.⁴

In the case of the indirect electronic commerce, the agreement is concluded online but the execution (the delivery) is happening through traditional channels. Instead, the direct electronic commerce conclusion of the agreement and delivery are both happening in the electronic channel. In the first definition, the electronic device or the internet are helping a traditional selling process; in the second definition they are the unique way to fulfill the sale.

Between the two types of electronic commerce, there is also another big difference. It originates from the type of products that they can sell: the indirect commerce sells traditional products and the direct commerce sells immaterial products.

The Italian legislation, by means of the Circolare n.3487/C (01.06.2000) on the Legislative Decree n.144/1998 about the discipline of the Trade, regards the definition given by the European Community in the communication n. 157, affirming that for the Legislative Decree 114/1998 that electronic commerce is meant as business selling goods.

In any case the distinctive characteristic of electronic commerce is to create and execute an agreement between sellers and consumers, without the necessity for both to be present at the same place in the same time.

For electronic commerce, the Market is the Network, which comprises not only the internet but also includes other kinds of network and electronic instruments such as Radio, Phones, Television, E-mails and Fax.

On the European level, the Directive 2000/31/EC, known also as the Electronic Commerce Directive, defines some legal aspects about services from the information society. This regulation is meant to apply the purpose of the Communication 157/97. The two most important aims are expressed in the first whereas: "The European

⁴ Com (97) CE 157/1997

Union is seeking to forge ever closer links between the States and peoples of Europe, to ensure economic and social progress”.⁵

The Directive also regulates some aspects of the information society services. Services that it defines, referring to the Directive 98/48/EC as: “any Information Society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services”.⁶ This definition also includes the commerce of goods and a lot of others online activities.

In the Italian system, the Directive has been implemented through the Legislative Decree No 70 of 9 April 2003. In some points, the Legislative Decree No 70/2003 is more specific than Directive 2000/31/EC. One of these specifications is the request of information that has to be directly, permanently, and easily accessible for the authorities and the recipient of the service. These are:

- Name
- Denomination or business name
- Residence or legal residence
- Personal data that allows to communicate quickly with the service provider, including the e-mail address.
- The number of registration to the register of economic activity (REA) or the commercial register.
- The personal data of the vigilance authorities when the commerce activity is subordinate to concession, license or authorization.
- The VAT numbers.
- Clear direction about price and tariff of the services, highlighting if they include taxes, shipping charges and other adjunctive parts.
- Directions about the activities allow for the consumers and recipient of the service.
- Data about the contract if the activity is subject to authorization or the object of the service is provided in base of a custom license.

⁵ Directive 2000/31/EC, Whereas 1

⁶ Directive 98/48/EC, Article 1, point 2

1.1.3 Type of e-commerce

The subjects and objects of commerce are always sellers and consumers. But, these roles are not always covered by specific persons that have that position. The difference of position of sellers and consumers originate different kinds of commerce, in e-commerce there are three different kinds:

- B2B: The commerce Business to Business involves two companies, this kind of commerce usually regards raw materials, semifinished products and wholesale from industries to retailers.
- B2C: The commerce business to consumer is a commerce activity between a business and a private person. The private person is the one who will use purchased products.
- C2C: The commerce consumer to consumer is an exchange activity between two private persons.

1.2 Introduction on Food Commerce Legislation.

The previous chapter introduced the e-commerce and its European and Italian rules. The aim of this work is to analyze food e-commerce and to do so it is also necessary to introduce Food Commerce Legislation that must be applied in every kind of commerce that sells foodstuff or food products.

1.2.1 The Regulation EC No 178/2002

Having as object the sale of food, the food trade needs to be subject to a specific legislation to guarantee consumer safety. For the European Union, this is regulation (EC) No 178/2002 that:

- Lays down the general principles and requirements of food law
- Establishes the European Food Safety Authority
- Lays down the procedures in matters of food safety.

Regulation EC No 178/2002 is the result of a work of improvement and harmonization operated by the European Commission on the Community and Member States Food law, to guarantee the free movement of safe and wholesome food through the Member States of the Community.

As said in the whereas 1 food safety is important because it contributes significantly to the health and well-being of citizens, and to their social and economic interests.

Whereas 3 and 4 highlight the importance of having a unique law regarding food safety. As a matter of fact, if each Member State adopted a national measure for governing food, the differences between measures could impede the free movement of food, create unequal conditions of competition and affect the function of the internal market. For this reason, harmonization of food law is necessary to make sure that the business of all the state members have the same possibilities on the market. And it is also required to harmonize the food law to guarantee the free movement of safe and wholesome food through the Member States of the community.

The regulation, at the whereas 12, assumes that to guarantee the food safety it is necessary to consider the whole aspects of the production chain from the primary production to the sale supply of food to the consumer. Chapter 1, article 1, clause 3 declares that: this regulation shall apply to all stages of production processing and distribution of food and feed. It shall not apply to primary production for private domestic use or to the domestic preparation, handing or storage of food for private domestic consumption.⁷ The reason why it should be applied to each stage is because, each element of the production chain may have a potential impact on food safety. Indeed, it can't be applied on the private domestic use, preparation, or handling because from the moment of the purchase the responsibility is the consumers and it is impossible to discipline the consumers actions.

The meaning of stage of production, processing and distribution is defined as: 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.⁸

Regulation EC No 178/2002 introduces at chapter 1, article 2 and 3, some definitions that are useful for the study of the food trade:

Definition of "food": for the purposes of this regulation, 'food' (or 'foodstuff') means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans.

'Food' includes drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture preparation or treatment.⁹

⁷ Regulation EC No 178/02, Chapter 1, Article 1, clause 3

⁸ Regulation EC No 178/02, Chapter 1, Article 3, clause 16

'Food' shall not include: feed, live animals, plants prior to harvesting, medicinal products, cosmetics, tobacco and tobacco products, narcotic or psychotropic substances, and residues or contaminants.

Other definitions given in article 3 are:

Food law: means the law, regulations and administrative provisions governing food in general, and food safety in particular, whether at community or national level; it covers any stage of production, processing and distribution of food, and of feed produced for, or fed to, food-producing animals.¹⁰

Food business: means 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.¹¹

Food business operator: means the natural or legal person responsible for ensuring that the requirements of food law are met within the food business under their control.¹²

Retail: means the handling and/or processing of food and its storage at the point of sale or delivery to the final consumer, and includes distribution terminals, catering operations, factory, canteens, institutional catering, restaurants and other similar food service operations, shops, supermarket distribution centers and wholesale outlets.¹³

Placing on the market: means the holding of food or feed for the purpose of sale, including offering for sale or any other form of transfer, whether free of charge or not, and the sale, distribution, and other forms of transfer themselves.¹⁴

Final consumer: means the ultimate consumer of a food-stuff who will not use the food as part of any food business operation or activity.¹⁵

Regulation EC No178/02 also identifies the protection of the interests of consumers as the aim of the food law and design to it the responsibility of providing a basis for the consumers to make informed choices in relation to the food they consume. According to the Regulation EC No 178/02 the food law shall also aim at the

⁹ Regulation EC No 178/02, Chapter 1, Article 1

¹⁰ Regulation EC No 178/02, Chapter 1, Article 3, clause 1.

¹¹ Regulation EC No 178/02, Chapter 1, Article 3, clause 2.

¹² Regulation EC No 178/02, Chapter 1, Article 3, clause 3.

¹³ Regulation EC No 178/02, Chapter 1, Article 3, clause 7.

¹⁴ Regulation EC No 178/02, Chapter 1, Article 3, clause 8.

¹⁵ Regulation EC No 178/02, Chapter 1, Article 3, clause 18.

prevention of fraudulent or deceptive practices; the adulteration of food; and any other practices which may mislead the consumer.¹⁶

The way to assure the information to the consumers and protect their interest during sales is the presentation of the product, article 16 explains that the presentation of food in its labeling, advertising, packaging, appearance, arrangement when displayed, or any other form of presentation to the consumers shall not mislead them.

As the article said, the presentation shall not mislead the consumer. The person in charge of avoiding misleading consumers during the retail is not only the manufacturer but can also be the food business operator responsible for retail or distribution activities, which do not affect the packaging, labeling, safety or integrity of the food. They shall initiate the procedures to withdraw from the market products not in compliance with the food-safety requirements, and shall contribute to the safety of food by passing on relevant information necessary to trace a food.¹⁷

Major directions about food labeling and information are giving by:

- The Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers.
- The Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods.
- The Regulation (EC) No 258/1997 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients.

In the end, about the imported and exported food, the Regulation says that food and feed imported into the Community for placing on the market shall comply with the relevant requirements of food law or conditions recognized by the Community to be at least equivalent to it. In case of specific agreement between the Community and the exporting Country it is request to fulfill those requirements. Food and feed exported or re-exported from the Community for placing on the market of a third country shall comply with the relevant requirements of food laws, regulations, standards, codes of practice and other legal administrative procedures as request from the importing country. In every case the competent authorities have to agree expressly on the exportation.

¹⁶ Regulation EC No 178/02, Chapter II, Section 1, Article 8, clause 1, letter a, b, c.

¹⁷ Regulation EC No 178/02, Chapter II, Section 4, Article 19, clause 2

It is therefore important when dealing with food commerce to take into account which States will possibly sell the wares and which food laws is active in them.

When the E-Commerce operator sells food products is considered a food business operator and must respect the food law.

2 AIM OF THE STUDY

Considering the increasing diffusion of online sale of food products and the importance for society of food safety, which can also be influenced by the distribution; the aim of this study is to analyze the e-commerce of food, its law and its control, in order to understand what can be done in our country to improve controls, safety and health of the consumers and to prevent unfair competition. The study also evaluates, on the basis of the German example, the possible application of a software concept to make the official controls.

3 TRIAL

3.1 The Food labeling legislation and the requirements for the distance selling

3.1.1 Food labeling.

Processed foods obtain specific characteristics due to their ingredients and the process of production. These characteristics are not always immediately understandable and most of all these characteristics are not standardized across all processed food, even when the product seems to be the same. When processed food is cook at home is easy to know what is inside it and it is easy to find the information about it. A simple question to the person who cooked the food will solve almost all of the possible problems. Speaking of processed food sold on the market the problem does not have the same easy solution. The food labeling is the way through which producer inform the consumer about the characteristics of the products and the instrument that consumers have to choose what they want to buy and eat. With the growing of particular nutritional needs in consumers labels are increasingly important to prevent danger to the consumers.

3.1.2 Food labeling meaning and importance of its regulation

In the modern society, as part of food sale, the large-scale retail trade has the upper hand on the traditional sales. Consequently, also the classic way of buying things, through a speaking interaction between the consumer and the retailer, has been increasingly replaced by the silent withdrawal of the products from a shelf. Therefore, information placed on the products packages are always more important not only to let the consumer know what they are buying and allow them to make an aware choice, but also because they are the only way that retailer/producer communicates with the consumers.

Communication, interpreted as the transmission of contents from a transmitter to a receiver, in the global market, has the important role of conversing to the consumer the characteristics of the products that the producer wants to sell. The less visible the product characteristics are, the more information the consumer needs to make a choice.

Communication can also be considered the main instrument of competition between companies, and needs to be regulated to prevent unfair competition from big

companies against small producers. Given the potentially severe impact of food products on people and their Health, and the uniqueness of them, readily available information about food products are important not only to protect the buyers but also every person who will consume the food.

Labels consist of mandatory and voluntary information about products and represent the way for the consumer to identify them¹⁸. As the EU Regulation No 1169/2011 declares:

a) label is any tag, brand, mark, pictorial or other descriptive matter, written, printed, stenciled, marked, embossed or impressed on, or attached to the packaging or container of food;

b) Labelling is any words, particulars, trademarks, brand name, pictorial matter or symbol relating to a food and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such food.¹⁹

Labels are:

- The way through which the producer provides information about the product to the consumers;
- The way through which consumers make their aware choice;
- The way through which a fair competition between companies can be made.

Labels need to be regulated to guarantee their truthfulness.

3.1.3 Food labeling in the European Community and in Italy

Information about foodstuff is an important topic that influences many percepts of the community jurisprudence like the free flow of goods, the protection of the consumers and the protection of the competition. For this reason, the European Community has always regulated it. The labeling regulation was born in 1987 with the directive Council Directive 79/112/EEC²⁰ that was abrogated in 2003 by the Directive 2000/13/EC²¹. In Italy, the Directive 79/112/EEC has been adopted through the legislative decree 109/1992 that has been constantly updated, including when the Directive 2000/13/EC was issued.

¹⁸ Biscontini G., 2012, Regolamento N. 1169 del 2011: tutele civilistiche per violazione del dovere di informazione nel settore alimentare, *Persona e Mercato*, 3, pag. 167

¹⁹ Regulation EU No 1169/2011, Article 2, paragraph 2, letters l, j.

²⁰ Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer.

²¹ Directive 2000/13/EC on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs

After a great deal of work on 25 October 2011, the European Parliament and the Council adopted the Regulation CE 1169 “on the provision of food information to the consumer”. The aim of the Regulation is to harmonize and gather the labeling laws in one Regulation. To do that the Regulation CE 1169/2011 amends and repeals some EC Regulations and Directives concerning food labeling and nutritional information.

As illustrated in whereas 48 and 49 the regulation leaves the member state free to lay down rules in respect of the provision of information concerning non-prepacked foods and does not prevent them from adopting national measures concerning matters not specifically harmonized by them. It is however essential that those national measures do not prohibit, impede or restrict the free movement of goods that are in conformity with the Regulation. Furthermore, the Regulation allows the member state, wherein it is authorized by Union law, to adopt national provisions on matters that are specifically harmonized in the regulation, always only if they do not prohibit, impede or restrict the free movements of goods. For this reason, the Italian legislative Decree 109/1992 has been modified but is still a landmark decree for the food labeling law in Italy.

3.1.4 European food law current constitution

The regulatory framework of the food law is therefore assembled from the Reg. CE No 178/2002 that dictate the rules and the general's principles of the food law in which we must locate also the Reg. (EU) No 1169/2011 on food labeling. There are also two other Directives: Directive 2006/114/EC concerning misleading and comparative advertising and Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market; that represent the landmark rules for the relationship between company and consumers and between companies.²² Speaking of the e-commerce purchase of products, to have a complete picture of the Legislation, it is necessary to include also the e-commerce directive for online sales, Directive 2000/31/EC.

²² Costantino L., 2012, “La nuova disciplina comunitaria sull’etichettatura degli alimenti e l’indicazione dell’origine”, Agricoltura – Istituzioni – Mercati, n. 2-3, pag. 132

3.2 The Regulation (EU) No 1169/2011:

Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers was adopted by the European Community on 25 October 2011 and published on the Official EU Journal the 22 November 2011. It became effective 20 days after being published on the Official Journal but has been applied only from the 13 December 2014 to give time to workers in sector of food to conform labels to the new Rules. In addition, a different deadline has been giving for the application of the Article 9, paragraph 1 letter l) about the nutrition declaration that has become mandatory from the 13 December 2016. This postponed deadline has also been giving to give time for workers to conform and the European Community to provide more indications about nutrition declarations.

Amending and Repealing all the Regulations and Directive quote in its title, and being a Regulation and not a Directive, the Reg. No 1169/2011 aims at the simplification of the European Community food labeling legislation. The regulation is a single instrument that defines principles and requirements for horizontal labelling requirements regarding both general and nutrition labelling.

Article 1 section 2 defines the goals of the legislation as the establishment of general principles, requirements and responsibilities that govern food information and food labelling. Also, article 1 section 3 indicates to whom the regulation shall apply, these are food business operators at all stages of the food chain wherein their activities concern the provision of food information to consumers; that includes food for the final consumer but also foods delivered by mass caterers and food intended for supply to mass caterers.²³ Food business operators are therefore the subjects of this Regulation.

At the article 8 the Regulation establishes the responsibilities of the food business operators identifying as: responsible for the food information the operator under whose name or business name the food is marketed or the importer into the Union market.²⁴

The food business operator shall ensure the presence and accuracy of the food information in accordance with the applicable food information laws and requirements of relevant national provisions. They shall also not modify the information that goes

²³ Regulation EU No 1169/2011, Article 1, section 3

²⁴ Regulation EU No 1169/2011, Article 8, paragraph 1

with a food if such modification would mislead the consumer or reduce the security level; they are also responsible for every change made by them on the food information that goes with the product. About non-prepacked food the food for the final consumer or for supply to the mass caterers; the business operator shall ensure that information's regarding the food product is transmit to food business operators receiving the food. A food business operator that does not affect foods information shall not supply food that they know or thinks, based on their competence, to be non-compliant with the European Community food law and national dispositions.

When a food business operator is supplying food that is not intended to for the final consumer to other food business operators, they shall provide to the other food business operator the sufficient information that allows them to ensure the presence and accuracy of the food information.

Article 3, 4 and 7 introduce the legislation on consumer protection. The consumer has the right to high health and interest protection that can be achieved only with the mandatory information about food characteristics, safe use and nutritional information. Information must be accurate, clear and easy to understand and shall not mislead the consumer.

Categories of mandatory information are:

- (a) information on the identity and composition, properties or other characteristics of the food;
- (b) information on the protection of consumers' health and the safe use of a food. In particular, it shall concern information on:
 - (i) compositional attributes that may be harmful to the health of certain groups of consumers;
 - (ii) durability, storage and safe use;
 - (iii) the health impact, including the risks and consequences related to harmful and hazardous consumption of a food;
- (c) information on nutritional characteristics so as to enable consumers, including those with special dietary requirements, to make informed choices.²⁵

More specifically in Article 9 defined is the general mandatory information requested these are:

²⁵ Regulation EU No 1169/2011, Article 4, paragraph 1, letter a, b, c.

- (a) the name of the food;
- (b) the list of ingredients;
- (c) any ingredient or processing aid listed in Annex II or derived from a substance or product listed in Annex II causing allergies or intolerances used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form;
- (d) the quantity of certain ingredients or categories of ingredients;
- (e) the net quantity of the food;
- (f) the date of minimum durability or the 'use by' date;
- (g) any special storage conditions and/or conditions of use;
- (h) the name or business name and address of the food business operator referred to in Article 8(1);
- (i) the country of origin or place of provenance where provided for in Article 26;
- (j) instructions for use where it would be difficult to make appropriate use of the food in the absence of such instructions;
- (k) with respect to beverages containing more than 1,2 % by volume of alcohol, the actual alcoholic strength by volume;
- (l) a nutrition declaration.²⁶

As we can see, letter l indicates that the nutrition declaration is mandatory. From the whereas about it emerges that the nutrition declaration is considered essential for presenting correct nutritional information to the consumers.

There is also additional mandatory information specific to types and categories of food introduced and laid down in the Annex III. Other most specific indications on the mandatory information are given in the article included in Sections 2 and 3.

Article 7 define the fair information practice to assure that information supplied with food is accurate, clear and truthful. Food information shall not mislead the consumer specially regarding:

- Characteristic of the food (nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production).
- Attributing to the product effects or properties that he does not have.

²⁶ Regulation EU No 1169/2011, Article 9, paragraph 1, letter a-l.

- Suggest that the food has some special characteristic that in fact all the similar foods have, especially regarding the presence or absence of ingredients/nutrients.
- Suggest through the appearance, the description or the pictorial representation, the presence of a particular food or ingredient while a normally used ingredient has been substituted with a different component/ingredient.

According to paragraph 4 the rules about fair information must be applied also on publicity and to every presentation of food.

But how should this information be made available? Article 12 and 13 express themselves about it. According to Article 12 paragraph 2 mandatory information on prepackage food shall be applied direct on the packaging or on a label that is attach to it. Besides, article 13, gives directives on how mandatory information shall be applied. Mandatory information shall be marked in a conspicuous place in such a way as to be easily visible, clearly legible and, where appropriate, indelible. It shall not in any way be hidden, obscured, detracted from or interrupted by any other written or pictorial matter or any other intervening material.²⁷

Concerning non-prepackage food (that includes foods that are packed on the sales premises at the consumer's request or prepacked for direct sale) the Article 44 indicates as mandatory only the information about ingredients containing substance causing allergies or intolerance. All the other information, is not mandatory unless the Member States are adopting national dispositions that require the provision of them.

With article 36, the European commission has decided that all voluntary information about the food product presented to consumers must respect the good information practice. Voluntary information must not mislead the consumer, must not be confusing and ambiguous for the consumer, and if needed shall be based on relevant scientific data. Voluntary information can be:

- (a) information on the possible and unintentional presence in food of substances or products causing allergies or intolerances;
- (b) information related to suitability of a food for vegetarians or vegans; and

²⁷ Regulation EU No 1169/2011, article 13, paragraph 1

(c) the indication of reference intakes for specific population groups.²⁸

Regarding the country of origin, as presented in the letter i paragraph 1 article 9, there are some specific condition that decide whether it is mandatory or not to be presented. Article 9 refers to article 26 to determine this criterion. According to article 26 the indication of the country of origin or the provenance place is mandatory if the failure to indicate it can mislead the consumer about the real country of origin of the product. It is also mandatory for some types of meat. Moreover, if the country of origin or the place of provenance of the product are not the same for the primary ingredient, than it shall be specified that the countries of origin are different or both country shall be specified at the same time. This article is important to guarantee the fair competition between products from different countries. It shall prevent use of the country of origin as a reason to promote national products on the market without a real reason tied to the quality of the food.

Lastly another important area of interest about the supply of information, regulated by Regulation 1169/2011 through Article 14 is the distance selling of food. Article 14 identifies both the mandatory information that must be provided to the consumer and when this type of information of market is provided. This article is one of the main arguments of this thesis and will be discuss more extensively in the next chapter.

3.3 Distance selling: Article 14

For the purpose of this work is necessary to focus on the rules regarding the e-commerce that, in the Regulation 1169/2011, are contained in article 14. Article 14 regards to distance selling that includes the e-commerce. The article, quoted in the following lines, will be specifically analyze in this chapter.

Distance selling

1. Without prejudice to the information requirements laid down in Article 9, in the case of prepacked foods offered for sale by means of distance communication:

(a) mandatory food information, except the provided in point (f) of Article 9(1), shall be available before the purchase is concluded and shall appear on the material

²⁸ Regulation EU No 1169/2011, article 36, paragraph 3, letters a, b, c

supporting the distance selling or be provided through other appropriate means clearly identified by the food business operator. When other appropriate means are used, the mandatory food information shall be provided without the food business operator charging consumers supplementary costs;

(b) all mandatory particulars shall be available at the moment of delivery.

2. In the case of non-prepacked foods offered for sale by means of distance communication, the particulars required under Article 44 shall be made available in accordance with paragraph 1 of this Article.

3. Point (a) of paragraph 1 shall not apply to foods offered for sale by means of automatic vending machines or automated commercial premises.²⁹

With the aim of fulfilling the request of whereas 27, that enunciate that 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 communication³⁰. With the article 14 of the regulation UE No 1169/2011, the European Union legislators discipline for the first time the mandatory information on products sold through distance selling practice. The goal is to give to the consumer the same possibilities to make a conscious choice as if he was physically in the shop and to achieve this it is necessary to request the supply of the same mandatory information that the consumer can find on the product label at the moment of the purchase in the shop.

3.3.1 Article application field

The execution field for the rules of article 14 is all the food products sold through distance selling, including not only pre-packaged products but also non-pre-packaged products. Within distance selling is meant all the possible distance selling techniques like internet shops, switching platforms, Catalog offers, mail order business, postings offer, apps, phone, fax and similar. The characteristic in common for all distance selling techniques is to allow retailers and consumers to close the sale of purchases without being physically present in the same place at the same time. However, as stated in the paragraph 3, the selling by means of automatic

²⁹ Regulation EU No 1169/2011, art 14

³⁰ Regulation EU No 1169/2011, whereas 27

vending machines or automated commercial premises is not included in the distance selling techniques. Therefore, they don't have to submit to the rules of article 14 paragraph 1 letter a.

3.3.2 Mandatory information availability

According to article 14(1) letter a and b mandatory food information shall be:

- Available before the purchase conclusion, appearing on the material supporting the distant selling (for example catalog) or being provided through the appropriate means identified by the food business operator (for example a website link or a hotline number to call).
- Free, therefore information shall not have an additional cost.
- Available at the moment of the delivery.

The imposition for the mandatory food information to be free forbids the offer of a product with two prices, one lower without information and one higher with information.³¹ In this way it is guaranteed to the consumer the possibility to make informed choices.

As we already said, according to article 14(3) only part of these rules applies to automatic vending machines or automated commercial premises. Indeed, mandatory food information in this case shall be available on the product only at the moment of the delivery.

3.3.3 Which information are considered mandatory for the distance selling?

Concerning the type of information considered mandatory for the food products the article 14 makes a distinction between pre-packaged and non-pre-packaged food products.

³¹ Rubino V., Aversano F., Borghi P., et al, 2015, "Le informazioni sugli alimenti ai consumatori, il regolamento (UE) n. 1169/2011, Aracne Editrice, pag. 163

For pre-packaged food products before the purchase is concluded the mandatory information that shall be provide to the consumer are those expressed by the article 9 except for the date of minimum durability or the “use by” date (letter f). At the moment of the delivery instead all the mandatory food information shall be available. It is reasonable to not demand ‘the date of minimum durability or the “use by” date’ to be available before the purchase conclusion because, with the device used for the distance selling, it is not possible to foresee the exact product that will be sent. With the document ‘Questions and Answers on the application of the Regulation (EU) N° 1169/2011 on the provision of food information to consumers’ (31 January 2013) the European Commission advises that the lot number is not requested as mandatory information before the purchase conclusion because it is considered ‘mainly a tool to ensure traceability and does not affect consumers’ choice.’³² Also in the document ‘Issues relating to distance selling in the context of Regulation (EU) N° 1169/2011 on the provision of food information to consumers’ (2015), that focuses itself more on the distance selling issues, the European Community advises the freezing date is not mandatory information before the purchase conclusion. The date of first freezing, with respect to frozen meat, frozen meat preparations and frozen unprocessed fishery products is dealt within Annex X to the FIC Regulation and can be considered as a marking date alongside the date of minimum durability and the ‘use-by’ date.³³ Therefore as for the minimum durability or use by date is impossible to predict them exactly before the selling. It shall be reminded that both just mentioned documents have not a formal legal status, but are a device to help all the players of the food chain and the competent national authorities to better understand and correctly apply the Regulation EU No 1169/2011.

For not pre-packaged products the paragraph 2 refers to article 44 requiring the information requested by it to be available to the consumer as requested by paragraph 1 of article 14. Article 44 identifies as mandatory for non-pre-packaged products only the information about ingredients containing substance causing allergies or intolerances and, in the case of Member States adopting national dispositions that requires the provision of them, the other information. Also for non-

³² European Commission working group, 2013, Questions and Answers on the application of the Regulation (EU) N° 1169/2011 on the provision of food information to consumers’ (31 January 2013), paragraph 2.6.3, page 8.

³³ European Commission working group, 2015, Issues relating to distance selling in the context of Regulation (EU) N° 1169/2011 on the provision of food information to consumers’ (2015), paragraph 1.7 page 3

pre-packaged food products information shall be available before the closing of the purchase and at the moment of the delivery.

3.3.3.1 When shall the information be update

Other important and interesting observation contained in the working document 'Issues relating to distance selling in the context of Regulation (EU) N° 1169/2011 on the provision of food information to consumers' are the one concerning the organization of the supply of mandatory information in some particular case like: 1) products that difference themselves from each other for particular characteristic, like being priced by weight or have different country of origin; 2) how to deal with the supply of information's when there is a change of the products composition.

When the products can have different country of origin the Commission suggest to give a general indication of the possibilities (for example a list of possible country of origin). Speaking of price by weight products, considering that each product will be priced individually and it is impossible to calculate in advance the weight of the product, the suggestion is to inform the consumer about the possible categories of weight, for example big 1-0,8 kg, medium 0,79-0,6 kg and small 0,59-0,4 kg.

The change of composition of a product can be a problem when the retailer has in the stock both products, the product with the old composition and the product with the new one. It is up to the retailer to decide at what time to correct the information depending on the number of products in the stock. But, if the recipe change involves the introduction of a substance causing allergies, the change should be made immediately. It is also the responsibility of the consumer to be vigilant on the recipe change.

3.4 Identification of the statutory liability

According to the basic rules of the article 17 of the regulation 178/2002 and article 8 paragraph 1-5 of regulation No 1169/2011: every food operator is, accordingly to their role in the food chain, responsible for the fulfilment of the information duty explicate from the article 14 paragraph 1 and 2 of the regulation EU No 1169/2011.

The Q&A Document of the Commission (31.1.2013) helps to individuate those responsible for providing information on products in distance selling with more precision. The question that are posed are two:

- Who is accountable for giving the information to consumers?
- Who is responsible for the presence and accuracy of the food information?

The answer remembers that food business operators responsible for the food information is the operator under whose name or business name the food is marketed. That same operator must ensure the presence and the accuracy of the food information provided. And declare also 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.³⁴

Always regarding the distance selling paragraph 1.8 of the working document clarify that:

When a business runs a website hosting a commercial webpage that allows other small business to sell their food:

Given Article 8(3) of the FIC Regulation, the owner of the website must ensure that the catering businesses are aware that the FIC Regulation applies to the caterers and in particular:

- as far as prepacked foods are concerned:
 - a) That all mandatory food information, except the marking dates, must be available before the purchase is concluded (i.e. before the consumer decides to go ahead with the purchase) and must appear on the material supporting the distance selling or be provided through other appropriate means clearly identified by the food business operator, without any supplementary costs for the consumer;
 - b) That all mandatory particulars are available at the moment of delivery.
- As far as non-prepacked foods are concerned:
 - a) at the very least, they need to provide the consumers with allergen/intolerance information before a purchase is concluded (i.e. before the consumer decides to go ahead with the purchase);

³⁴ European Commission working group, 2013, Questions and Answers on the application of the Regulation (EU) N° 1169/2011 on the provision of food information to consumers' (31 January 2013), paragraph 2.6.1

b) there may be additional mandatory information required by national authorities.

If the owner of the website is not just hosting those catering businesses but the consumers pay the owner of the website and the caterer delivers the food to the consumer for which an agreed amount is paid to the caterer by the owner of the website, then the owner must ensure that the caterer complies with the FIC Regulation and national rules.³⁵

³⁵ European Commission working group, 2015, Issues relating to distance selling in the context of Regulation (EU) N° 1169/2011 on the provision of food information to consumers' (2015), paragraph 1.8

4 DISCUSSION

4.1 E-Commerce Turnover: Worth of the commerce, Italian situation and the influence of online food commerce on it.

Once e-commerce's definition, general rules, and the relevant rules regarding specifically to the field of food e-commerce and labeling are analyzed, a better and complete picture of e-commerce emerges. But, to fully understand the e-commerce market it is also appropriate to investigate the e-commerce turnover to understand its diffusion and value on commerce.

4.1.1 Worth of world e-commerce turnover

The online commerce B2C is a phenomenon that is developing continuously. In 2016 the World's e-commerce retail business is estimate 1.915 billion Dollars and represents 8,7% of the total retail. The two most predominant countries are China and the United States of America. In 2016 China was occupying the first position with 899,09 billion Dollars and USA following in second with a turnover of 423,34 billion Dollars. In China the business responsible for leading the e-commerce is the group Alibaba whereas in America it is Amazon and eBay.³⁶

4.1.2 Worth of European e-commerce turnover

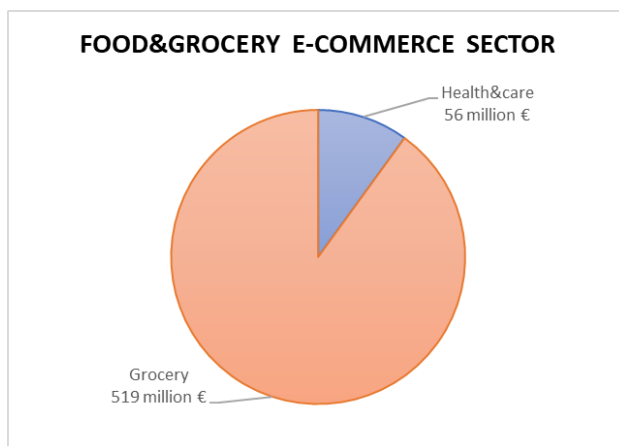
Europe had an estimated e-commerce value of 509,09 billion €, with 60% of the of the turnover coming from the UK, Germany and France. The UK, leading in the e-commerce market, had a turnover of approximately 203,26 billion dollars. Germany is in second for turnover contribution in Europe and is also home to Amazon's second most important international market having alone a turnover of 12,8 billion €.³⁷

³⁶ Casalecchio e associati, 2017, Report maggio 2017, Focus E-Commerce alimentari in Italia 2017

³⁷ Casalecchio e associati, 2017, Report maggio 2017, Focus E-Commerce alimentari in Italia 2017

4.1.3 The Italian e-commerce turnover and the influence of the Food&Grocery sector on it.

The estimate 2016 turnover for e-commerce B2C in Italy is 31,7 billion €. Italy, in comparison with other countries, still needs to develop this market sector. Most of the turnover value is owed to the sector of leisure, mostly online games, that amounts to 43% with tourism contributing 31%.³⁸ The Food&Grocery e-commerce market in 2016 had an amount of 575 million € that is 30% more than 2015 but still this only influences the Italian e-commerce turnover absolute value with 3%.



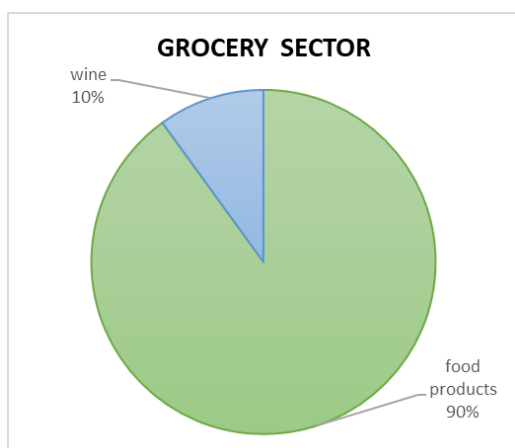
The Food&Grocery sector can be divided between Groceries and Health&Care. Groceries is the 90% of the sector and has a turnover value of 519 million €, Health&Care takes the other 10% and the remaining 56 million € turnover.

Graphic 1: composition of the Food&grocery e-commerce sector turnover

Online Groceries can be split in 3 different sectors:

- 1) Food grocery (product for grocery store), whose turnover amount in 2016 to 188 million €.
- 2) Gastronomy and wine (wine, beer, liquor) products, whose turnover amount in 2016 to 240 million €
- 3) Food service, whose turnover amount in 2016 to 90 million €.

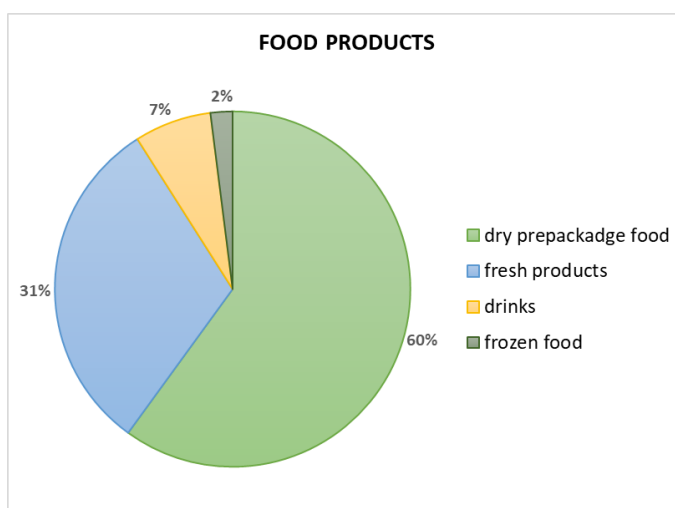
³⁸ Casalecchio e associati, 2017, Report maggio 2017, Focus E-Commerce alimentari in Italia 2017



Graphic 2: composition of the grocery sector

Splitting the groceries sector through the categories of products that compose it we can see that the 90% of it is made of food products and 10% of wine.

Splitting again the food products into typologies we will see that most of the demand is made of dry packaged products including coffee (60%) followed from fresh products (including ready to eat food) (31%). The remaining 9% is split between drinks (7%) and frozen food (2%).³⁹



Graphic 3: composition of the food product categories

4.2 Operators of the food e-commerce in Italy. The case of Padova and Bolzano

Given that it has been very difficult to find information about who are the main operators in the food e-commerce in Italy, it has been decided to investigate among the commerce chamber of Padova and Bolzano.

The commerce chamber extracted from the business registry the businesses that have declared performing e-commerce as principal or secondary activities and that

³⁹ http://www.osservatori.net/it_it/osservatori/executive-briefing/il-food-grocery-online-cresce-del-30-e-vale-575-milioni-di-a-nel-2016

are also registered as food commerce businesses. The extraction has been made through the ISTAT codes:

- 47.91 correspondence retail or internet retail.
- 47.91.1 retail of every product through internet.

The businesses are not required to give their website URL during the registration so, after the extraction the website were found and searched.

From the information's analysis emerge that:

For the territory of Padova it was possible to identify 22 Websites that can be divided in four categories of shops: 1) gastronomy products, 2) wine and beer 3) drugstore 4) wholesale suppliers for cater.

The gastronomy products category is the biggest one with 12 websites. It is mainly composed of shops selling typical products from the whole of Italy. The category of drugstore has been considered in the analysis because they sell food products for risk consumer categories such as children or people with particular nutritional needs like celiac disease.

For the territory of Bolzano, it was possible to identify 30 websites, the categories are the same as the territory of Padova with the exception of wholesale suppliers for cater. Differently from Padua, although it is still the largest category, the gastronomic shops are selling typical local products like bread, apple juice and speck, or biological products. The commerce chamber of Bolzano also reports in its register the large retailer Despar (who's legal headquarters is located in Bolzano) despite their website only being used for online promotion rather than online shopping.

Considering that is known that some large retailers and the big online operators like Amazon are developing grocery online shop service in Italy with availability currently in some shops in the biggest cities like Roma, Milano, Torino, Genova and so on but their spread is still very small.

Considering that between Bolzano and Padova the differences are more on the products that are selling online instead of the operators of the online market, and that these operators are mostly small shop or retailer.

Considering the statement of the Director of the eCommerce B2c Observatory of the Politecnico di Milano, Riccardo Mangiaracina, who states that "In Food & Grocery, contrary to what happens on average, in the Italian eCommerce B2c are the

traditional operators (retailers and producers) that are playing a dominant role with 67% of sales value in 2016."

We can observe that the result of the investigation among the commerce chamber of Bolzano and Padova, whose showed that in these two territories the operators of the food e-commerce are mostly small shop or retailer, falls within the statement.

4.3 Official e-commerce controls

As we analyzed, the e-commerce and the food e-commerce is a sector that is constantly developing. Recognizing this importance, the European Commission regulates it through specific article integrated in food law. Aim of this article is to protect the consumer, the retailer and to guarantee the free market. To understand what could be done to improve the respect of this rules is necessary to have an overview of the situation that include also the regulation about official controls and that considered also what is already done in the sector of e-commerce controls.

4.3.1 Current work applied in Italy

To understand what has been done in Italy until this moment, has been taken contact with:

- A spokesperson the ICQRF (Department of central inspectorate for quality safeguarding and anti-fraud of foodstuff and agricultural products) as institutional system for the Ministry of Agriculture and Forestry.
- A spokesperson from the NAS corps of Carabinieri from Trento and from the local health authority of Bolzano as institutional system of the Ministry of Health.

Both Ministry are responsible for supervising the quality of the food products but, while the Ministry of Health is focusing their activity on the safety of the food, the Ministry of Agriculture and Forestry is focused on prevention and control activities in the field of food labelling and quality of agricultural-food products.

4.3.1.1 Official Control made by the ICQRF Office

ICQRF is the institutional control authority of MIIPAF (Ministry of Agriculture and Forestry) and is appointed for the prevention and repression of agricultural-food products fraud, and through the protection authority ex officio, is the chosen Italian authority to prevent and stop the illegal use of the Protected Designation of Origin and Protected Geographical Indications (PDO and PGI). There are different control programs on the web for food selling, one for the international and one for the national sphere.

In the national sphere, the ICQRF activity regarding food products on the web is done from the territorial's offices of the ICQRF following an annual control plan named: "control of the electronic commerce of regulate quality food products". The aim is to protect consumers and food business operators from unfair competition and is fulfilled through the check of the website and of the information contained. The information that is verified concerns presentation and publicity of food product including wine products and with particular attention to PDO, PGI, GTS and organics products. Controls are also on processed/compound products that use in the presentation and in the designation references to PDO and PGI. Verifications are on the e-commerce but also on every communication, both directly and indirectly, promoting and presenting food products on the website.

Checks start in the office through a verification of the website and, in case of necessity, they proceed directly to the operator responsible for the misleading or incorrect information. Information regarding the website and its registration are verified through telematics website database.

Regarding the international sphere, the ICQRF operate as Italy's authority in charge of guaranteeing the protection on PDO and PGI trademark. Their work is based on a cooperation/partnership with the most important electronic commerce market places like eBay, Alibaba, and Amazon and take care of every kind of unfair competition. The control activity extends on the checking of: label, selling designation, the publicity and the description of the products content in the selling advertisement.

The collaboration between the ICQRF is possible because the electronic market places are Internet Hosting Providers (IHPs). According to the article 14 of the directive 2000/31/CE IHPs provide hospitality on the network to advertiser that want to use that and that are free to offer whatever they want. HIPs don't have the obligation to supervise the activities and to search for irregularity, but they have the

duty of removing the illegal or wrong advertisement. To avoid every responsibility, the HIPs have created an Intellectual Property Rights Protection Systems that allows the holders of such rights to notify the violation⁴⁰ and ICQRF is the owner of the Italian PDO and PGI rights.

The ICQRF has signed a Memorandum of Understanding (MoU) with eBay and Alibaba that allows them to work into the platforms as an intellectual property rights owner for searching and point out the violations. The ICQRF has not signed a MoU with Amazon but, it is sending the violation advise directly to the Department of legal affairs of Amazon Europe.

4.3.1.2 Official control made by the local health authority and the Carabinieri Corp NAS

From the contact with the local health authority and the Carabinieri has come to the light that there is not a systematic control on the online selling product. The official controls are done mostly directly in the physical selling place because usually it is a shop or a manufacturer that make distance selling only as secondary activities.

Considering that the official control activities are planned based on the Multiannual National Control Plan – MANCP defined from the Ministry of Health and requested from the regulation CE No 882/2004 this result should not be a surprise. Indeed, the regulation doesn't include the e-commerce as a possible field to be controlled. However, in a short time this kind of activities will need to be planned because on the 15 March 2017 the Regulation (EU) 2017/625 of the European parliament and of the council 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 was signed. This Regulation repeal regulation no 882/2004 and introduce the food e-commerce controls.

⁴⁰ <http://www.veterinariaalimenti.marche.it/Articoli/agro-alimentare-e-web-lapproccio-dellcqrf>

4.4 Future improvement of the official control: Regulation EU 625/2017 and his possible implication on the sampling process.

4.4.1 Introduction to the Regulation EU 2017/625

The regulation (EU) 2017/625 of the European parliament and of the council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, became law 27 April 2017 and will be applicable from 14 December 2019.

This Regulation amends and repeals EC Regulations and Directives regarding official controls on the application of food and feed laws regarding plant and animal health, welfare and protection. Relevant for this work is to highlight that the Regulation EC 625/2017 repeals Regulation EC No 854/2004 and Regulation EC No 882/2004 regarding official controls on animal origin products for human consumption and official controls for ensuring the verification of compliance with feed and food law, animal health and animal welfare rules.

Regulation EU No 625/2017 establish integrate rules to prevent the risk for human, animals and plants among the agricultural foodstuff chain and will be the only landmark for all official control.

4.4.2 The Article 36 and the use of sample obtained through Mystery shopping

Regulation EU No 625/2017 will be applied also on the e-commerce, and with article 36 the Regulation will introduce some important possibilities for the official controls:

Article 36

Sampling of animals and goods offered for sale by means of distance communication

1. In the case of animals and goods offered for sale by means of distance communication, samples ordered from operators by the competent authorities without identifying themselves may be used for the purposes of an official control.

2. Competent authorities, once they are in possession of the samples, shall take all steps to ensure that the operators from whom these samples have been ordered in accordance with paragraph 1:

(a) are informed that such samples have been taken in the context of an official control and, where appropriate, are analyzed or tested for the purposes of such official control; and

(b) where the samples referred to in that paragraph are analyzed or tested, are able to exercise the right to a second expert opinion, as provided for in Article 35(1).

3. Paragraphs 1 and 2 shall apply to delegated bodies and natural persons to which certain official controls tasks have been delegated. ⁴¹

As we can see the article introduces the possibility to use sample obtained through Mystery shopping, in other words order without revealing the identity of the buyer, for the official control and designates the competent authorities to inform the operators and guarantee to them the possibility of a second expert opinion. This is without any doubt a good start that will require an accurate study of the situation to guarantee the truthfulness of the result of the analysis and will probably require a law adjustment regarding the sampling process.

4.4.3 Consideration on the possible consequence of the application of Article 36 on the sampling process.

As a matter of fact, the official control sampling activity in Italy is regulated by the law No 283 from 30 April 1962 and from its execution Regulation, the Decree of the President of the Republic No 327 from the 26 March 1980. Reading the articles regarding the sampling (Art 6 to 16), it is easy to find that most of the rules and principle will not be applicable to the sampling through Mystery shopping.

Firstly, the sample should be collected to be representative of the whole lot, that is something that rationally can't be expect from the selection that the e-commerce operator makes when they ship products. Also in case of special analysis (for example microbiologic analysis or percentage of humidity) there are specific sampling rules that may not be respected when the one who collects the sample are not the official Authorities operators. The sample shall also be sealed and stamped to guarantee its integrity. This is another sampling process that can't be guarantee

⁴¹ Regulation EU No 625/2017, article 36

through the e-commerce order of products. Therefore, perishable food or frozen food have carry conditions to respect for example, conservation of the correct temperature. It is desirable that speaking of foodstuff the industrial shipping service should guarantee those conditions but, without an official authority operator to execute this it is not possible to be sure.

Secondly specific operation of the sampling process requires the physical presence of the food business operator. One of the 5 parts that composes the sample needs to be able to deliver at the moment of the sampling to the business operator. But, how can this be possible if the samples are order anonymously? Another problem will surely be the sampling report: for the compiling of the sampling reports it is necessary for information like time, data and place of the sampling, personal details of the sampler and of the business operator that supervised the sampling, statement of the sampler on the effective sampling, statement of the business operator about the holding of one sample and sampling report, statement that the business operator has listen to the sampling report reading and that they have sign it or refuse to sign it, the signature of the business operator and of the recorder, possible statement of the business operator about possible alteration or addition to the product from when it was receive by them and possible statement of the business operator on the name and the residence of the ware suppliers and the day of delivering needs to be available. If we consider products ordered through distance selling as if they are a sample most of this information is not available. For all of the presented reasons to give common and equal guidelines for the whole country, guaranteeing the protection of the businesses rights and the consumers safety there will surely be require an implementation of the law.

4.5 Possible implementation for the Official Control: application of a software prototype.

4.5.1 Germany Example

Considering the limits that can come upon the application of the stationary food inspection to the internet sales and also the huge expansion of the web that gives to the online marketplace the characteristic of being almost limitless, the Germany's Federal Office of Consumer Protection and Food Safety has worked on the development of new modified approaches in order to achieve for the e-commerce

food products the same level of safety and control as the one that can be found among the normal food selling. The solution consists in an automated and IT-based system for the implementation of efficient inspection procedures. Working together with the Hamburg University of Applied Sciences and the Institute of Food Technology and Food Chemistry of the Berlin University of technologies, the Germany's Federal Office of Consumer Protection and Food Safety they have developed a new software prototype concept that automatically identifies and evaluates potentially non-compliant e-food products⁴².

4.5.2 Concept and structure of the software prototype.

To develop the software, three areas considered relevant for the automating online food products controls have been identified. Those areas are products control, monitoring, and exposing the improper use of logos or seals.⁴³ The aim of the product control software is to identify the potentially non-compliant food products on internet and report them to the local authorities. The automation will include reactive and proactive control. Reactive control will serve to identify products offering which have already been classified as high-risk. Proactive control involves seeking out products and webpages which violate applicable food law but which the competent authorities have yet not become aware of.⁴⁴ Monitoring food products traded over the internet should enable both proactive and reactive automatic control on an ongoing basis in addition to risk assessment down to the level of specific merchants, products and ingredients⁴⁵ in the same way as the controls are made on conventional merchants. Detecting of improper use of logos and seals is important to protect the Consumer from possible falsification. The software is meant to detect logos and seals to understand if they correspond to the formal requirements and to individuate the improper use of the logos due to the absence of use permission.

⁴² Krewinkle A., Sünkler S., Lewandowski D., and others, 2016, "Concept for automated computer-aided identification and evaluation of potentially non-compliant food products traded via electronic commerce", Food Control, Elsevier, pag. 204

⁴³ Krewinkel A., Sünkler S., Lewandowski D., and others, 2016, "Concept for automated computer-aided identification and evaluation of potentially non-compliant food products traded via electronic commerce", Food Control, Elsevier, pag. 205

⁴⁴ Krewinkel A., Sünkler S., Lewandowski D., and others, 2016, "Concept for automated computer-aided identification and evaluation of potentially non-compliant food products traded via electronic commerce", Food Control, Elsevier, pag. 205

⁴⁵ Krewinkel A., Sünkler S., Lewandowski D., and others, 2016, "Concept for automated computer-aided identification and evaluation of potentially non-compliant food products traded via electronic commerce", Food Control, Elsevier, pag. 204

All this concept has been actualized in a software prototype divided into three tools each one of them is divided into autonomous components. Each component within the software reaches decisions based on its algorithms, it outputs a confidence value for the fragility of these decisions.⁴⁶ In this way is possible for the users to define threshold and if there is a decision that is not deemed reliable enough it will be possible to entered it later using a computer aided evaluation interface. Also, the software stores all matching data from webpages meeting the defined criteria for the research and saves local copies of the webpages into a dedicated database for later analysis and preservation of evidence. The store data include the matching webpages with URL, home pages and corresponding site legal notice. In case of duplicates originating from different research the software detects them automatically during the data acquisition and considered them only once. All of merchant's relevant information is automatically summarized in a final report which is transmitted to the competent local authorities, providing the basis for further official action.⁴⁷

The three tools are: Research Tool, the Image Analysis Tool and the Monitoring Tool. The Research Tool process all the information as text on the website, it detects the website searching potentially non-compliant products, violations of food regulations and the compilation of the corresponding merchant information. The Image Analysis Tool recognize, store, analyse and evaluate all information presented as images like logos and seals. Lastly the Monitoring Tool performs repeated automated monitoring of food product e-commerce verifying that the non-compliance has been corrected.

⁴⁶ Krewinkel A., Sünkler S., Lewandowski D., and others, 2016, "Concept for automated computer-aided identification and evaluation of potentially non-compliant food products traded via electronic commerce", Food Control, Elsevier, pag. 206

⁴⁷ Krewinkel A., Sünkler S., Lewandowski D., and others, 2016, "Concept for automated computer-aided identification and evaluation of potentially non-compliant food products traded via electronic commerce", Food Control, Elsevier, pag. 206

4.5.3 Examples of software operation

4.5.3.1 Research Tool process

In figure 1 we have the research Tool process of the software. As we can see the process is divided into different steps, each one of which request the manual evaluation of the user to go on to the next one.

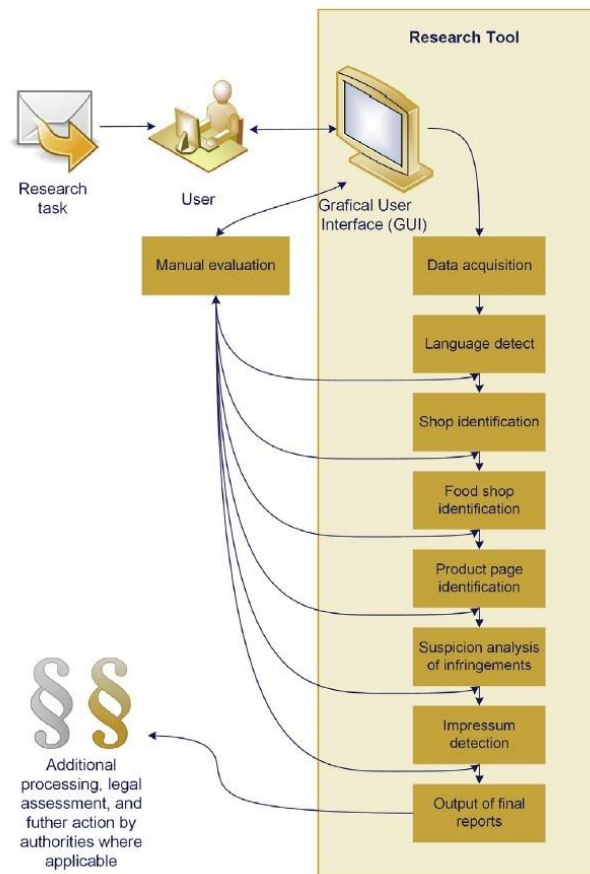


Figure 1: Research Tool process for automated controls of food products sold via electronic commerce.

4.5.3.2 Setting a research and getting the results

First the project has to be started, it is necessary to create the project inserting a Task and a Description as showed in figure 2.

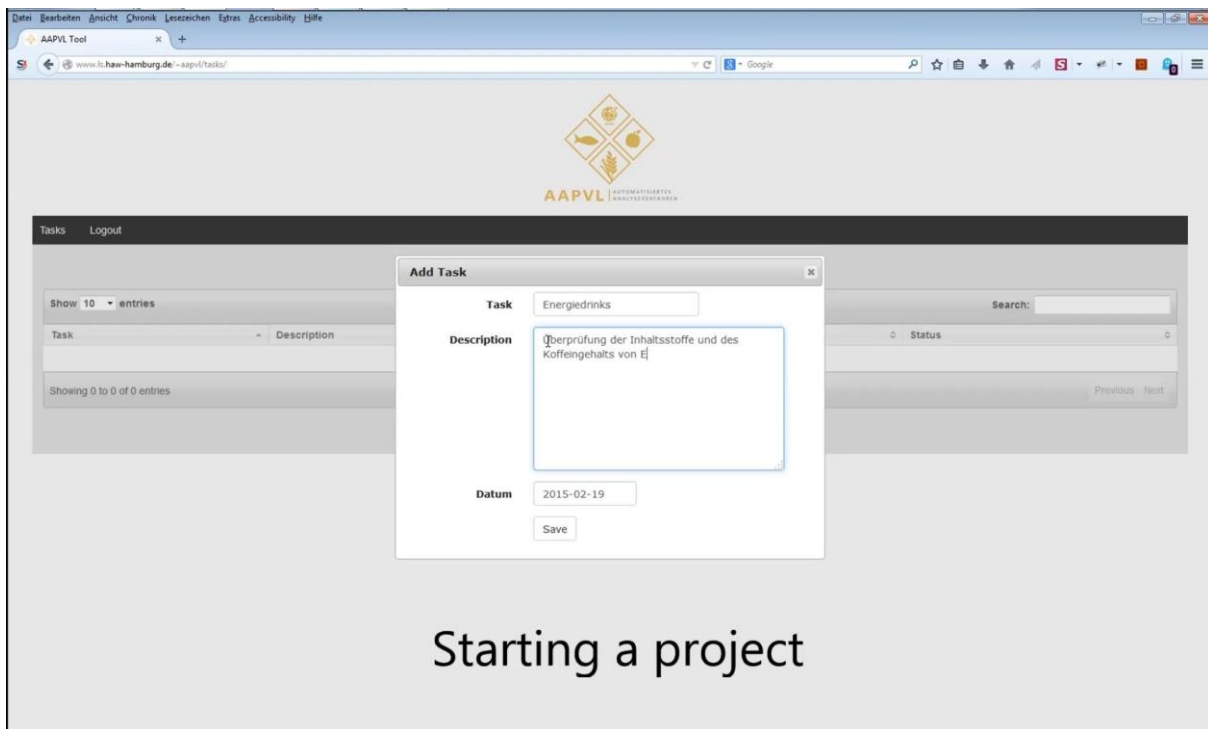


Figure 2: creation of a project

Secondly, as we can see in figure 3 it is necessary to create the filters. The creation of the filters is made adding Query's.

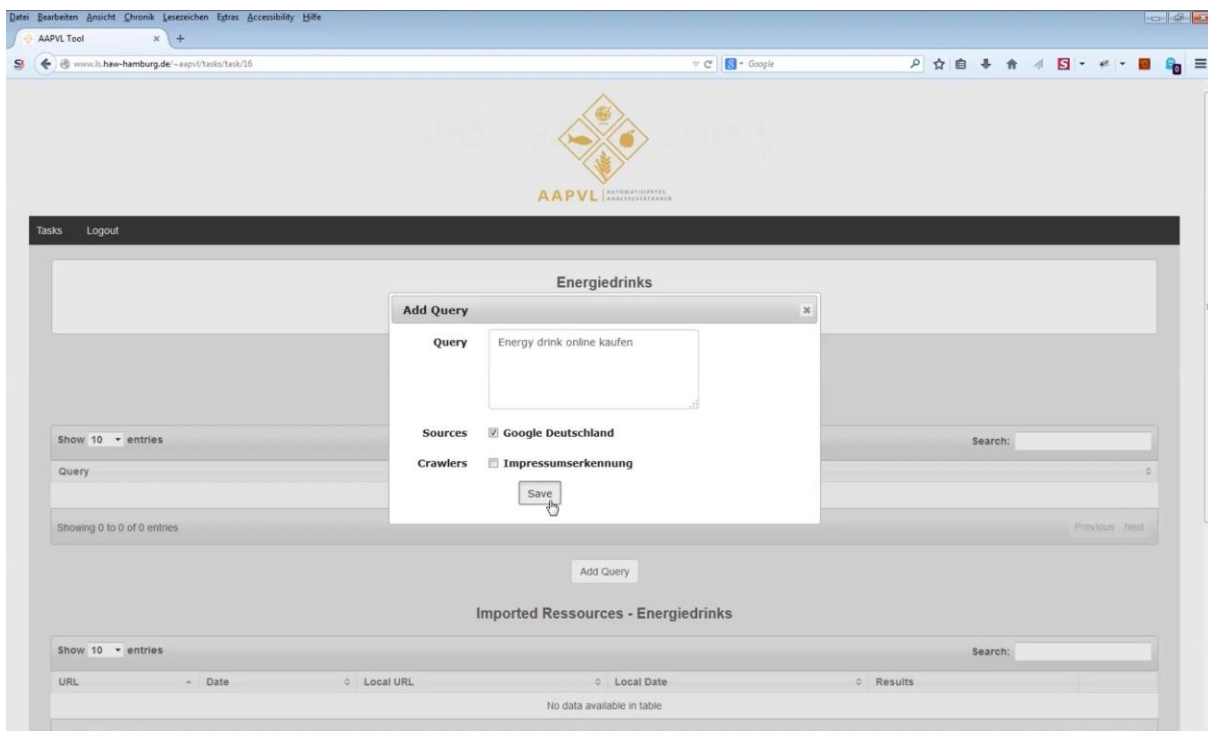


Figure 3: creation of filters adding Query's.

At this point, the software will analyze the selected sources and get search result (Figure 4). A local copy of the result will be saved. (Figure 5)

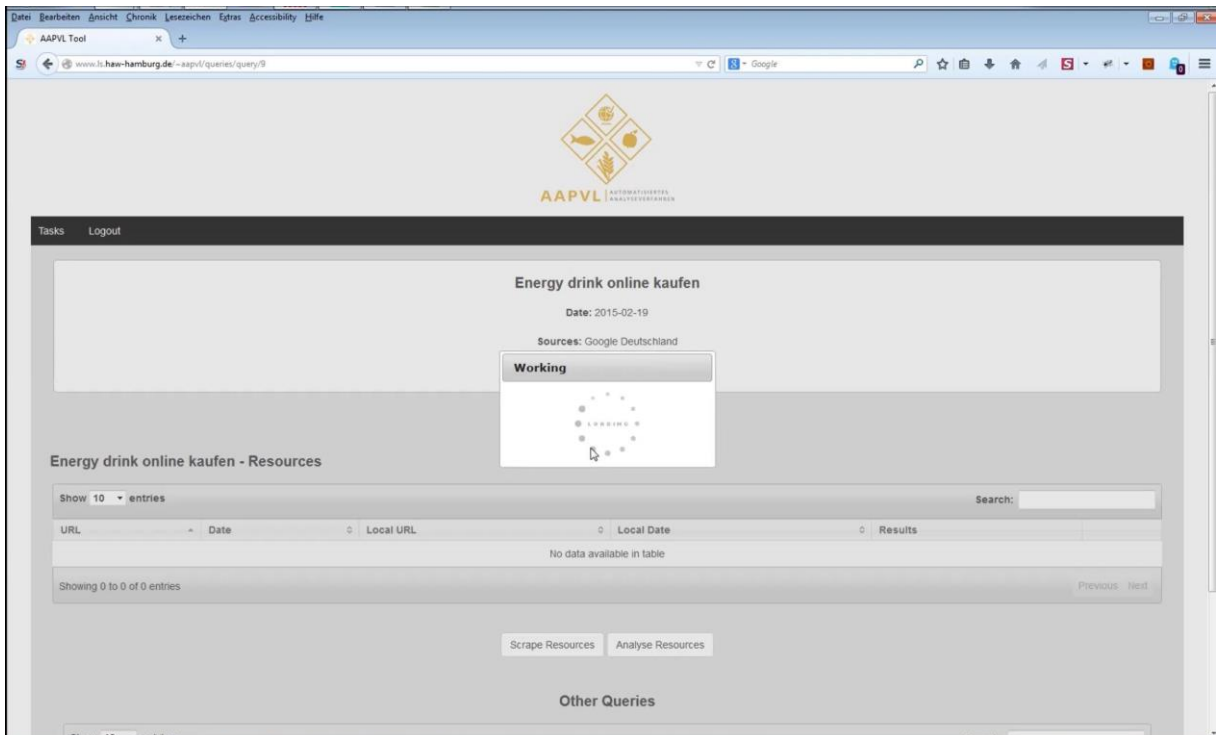


Figure 4: searching of result

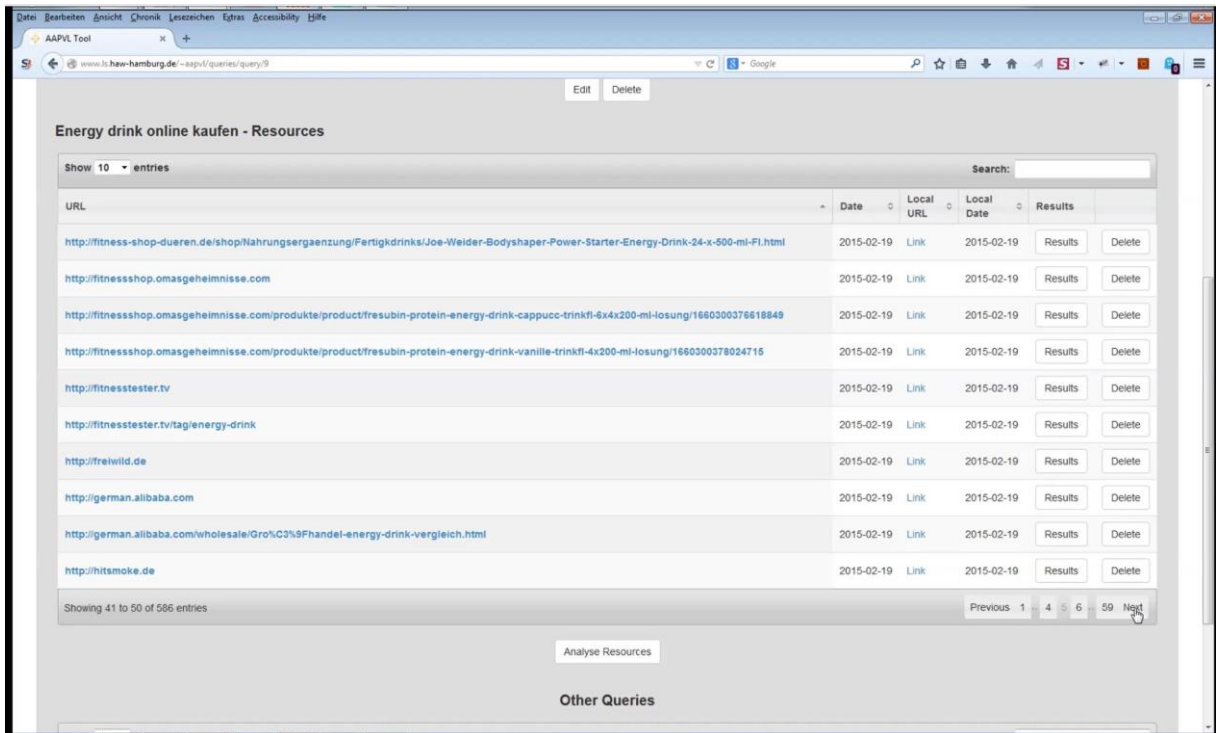


Figure 5: local copy of the result

4.5.3.3 Getting vendor information

In order to get the vendor information All URLs resulting from the search are further scanned by the software. (Figure 6 and 7)

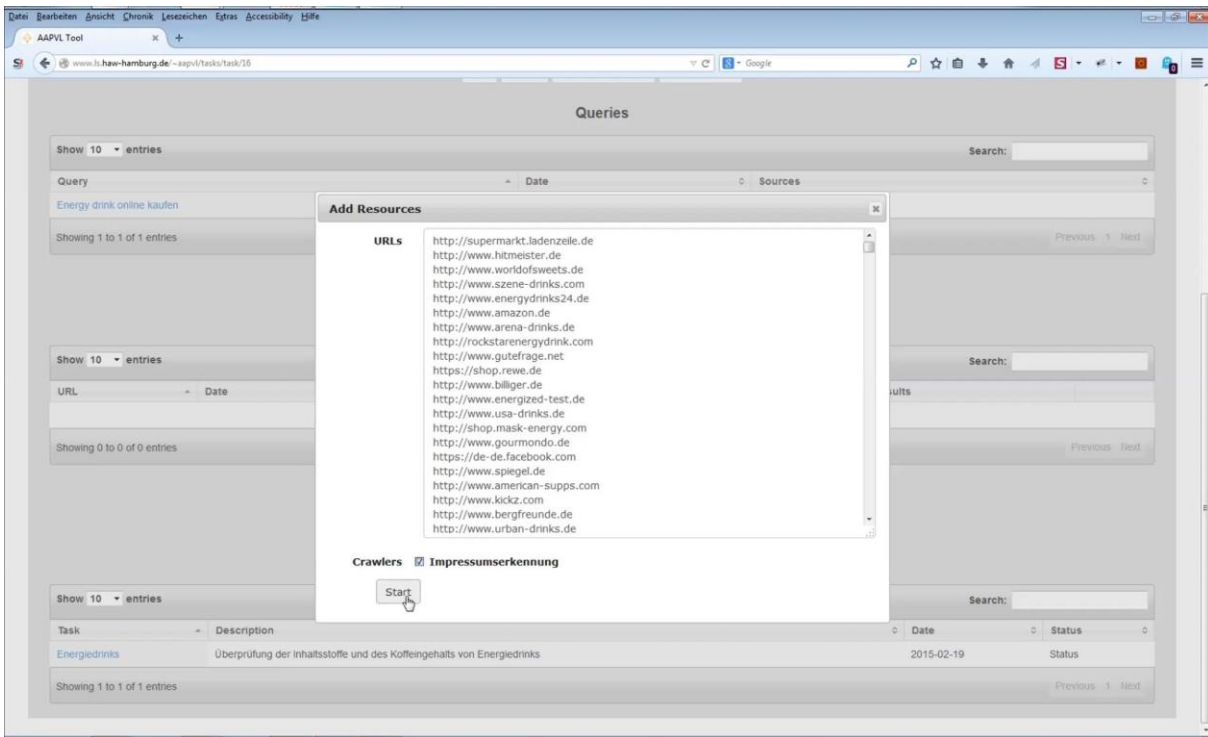


Figure 6: selection of the URLs for the scanning

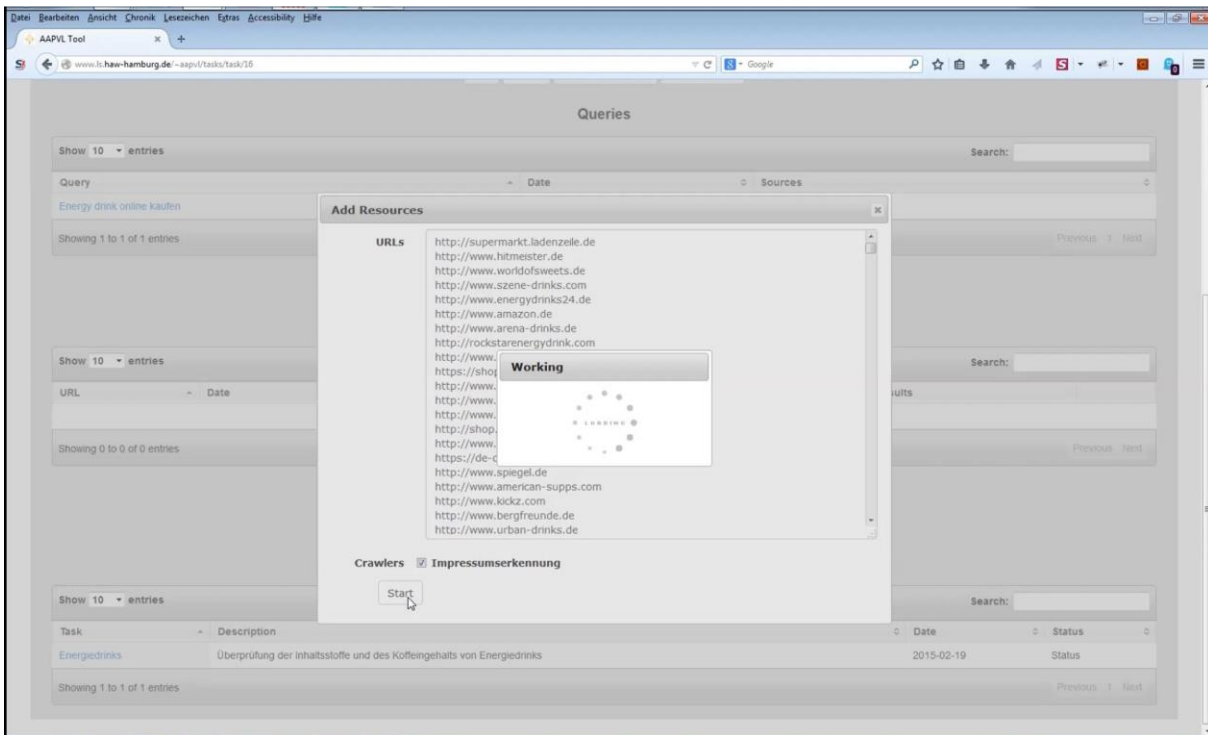


Figure 7: scanning of the URLs

The software records information about the URL and creates an excel file containing all this information. (Figure 8)

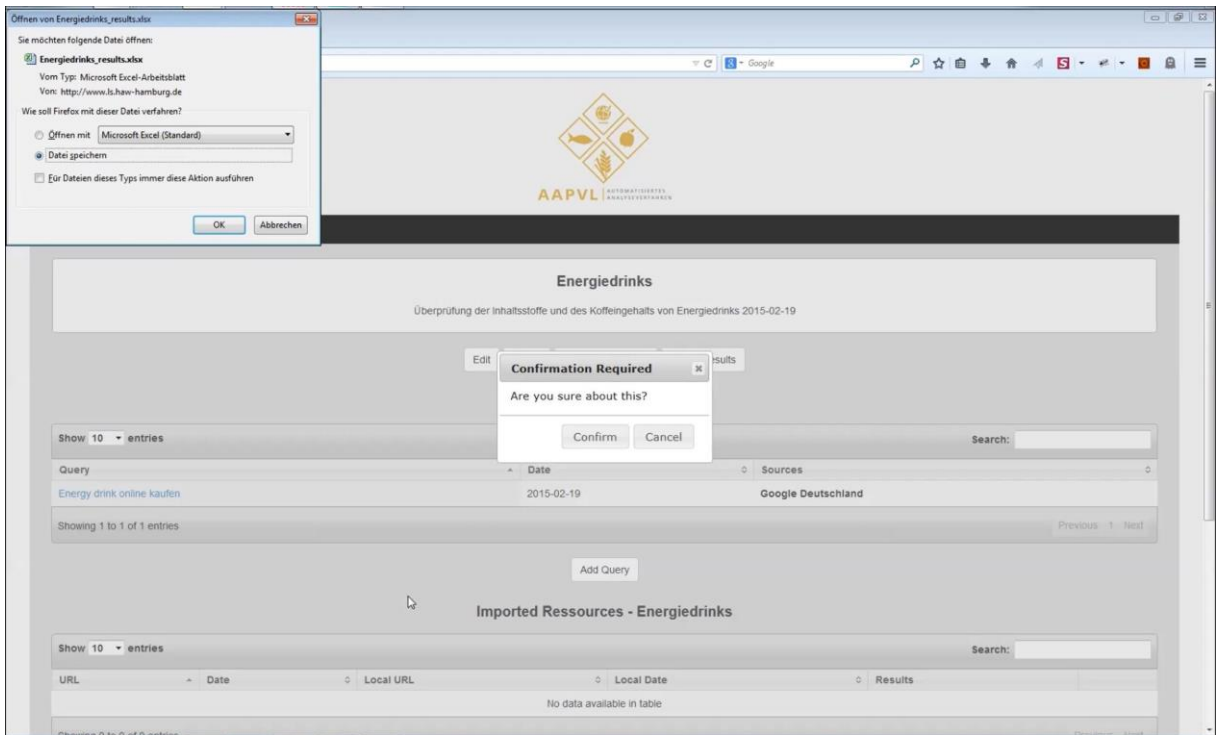


Figure 8: creation of the excel file containing the software records information about the URLs

4.5.3.4 Text analysis of the memorized website

A possible use of the software is to analyze text of the website to identify, for example, a specific ingredient. The tool that does this analysis is the one in Figure 9.

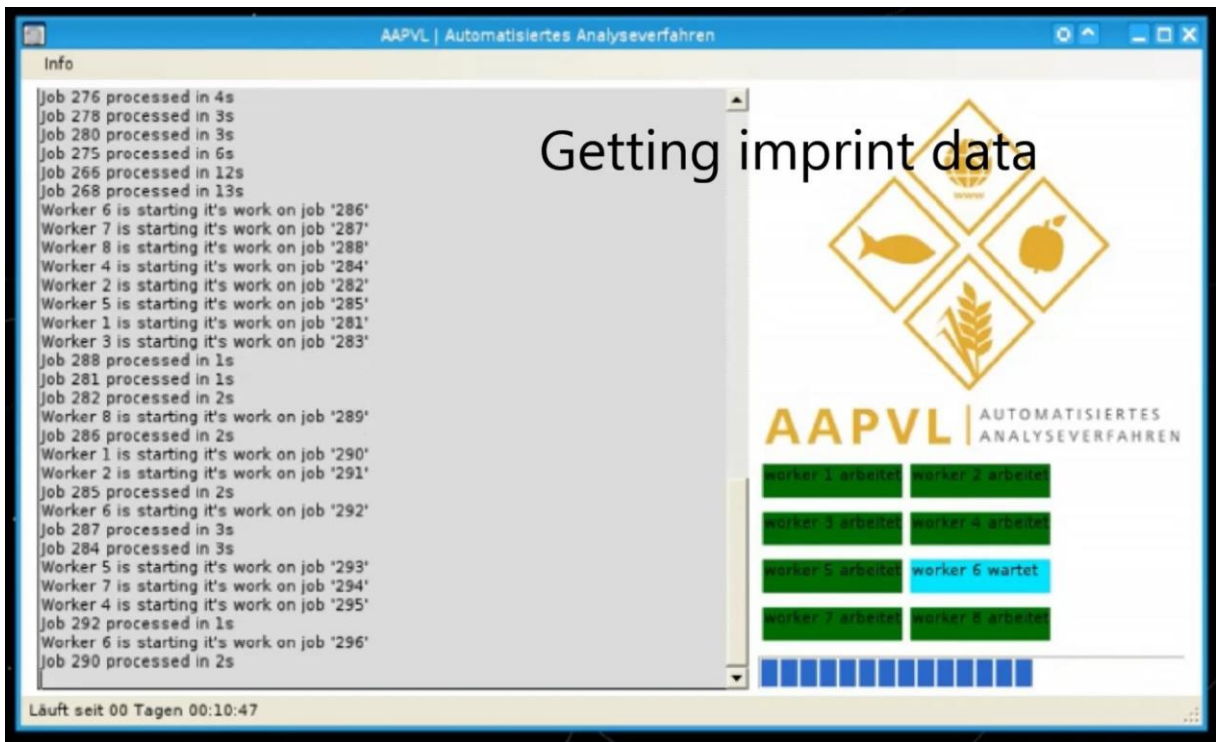


Figure 9: tool used to analyze the text of the website.

4.5.4 Which are the possible useful application of the software to improve control

Surely in Italy, especially in the field of the PDO, PGI and their commercials, the work for the control of the online food products trade is already active and efficient. But, considering the immensity and constant expansion of the web more improvement can always be made. The amount of data that can be found on the internet is already enormous, and with the years it will only become more difficult to manually process this kind of data due to its expansion. In addition, most of the work is done directly for products whose quality is protected through PDO and PGI leaving a huge part of food products on border of official controls. Therefore, the application of a software like the one we presented in the previous chapter could be very helpful.

Firstly, the software makes an automated analysis processing a large amount of data. The software doesn't leave out of the analysis retail activity and will maximize the analysis process. These conditions are impossible to reproduce doing a manual analysis of the website. Secondly the storage of the websites information including the URL and site legal notice will allow official authorities to have access to a register of the online retail activities. This could be helpful to keep track of the market and to plan the official control. Furthermore, the repeated monitoring process operated from the monitoring tool allows information updates, constantly control, and the non-compliant to know if they have been corrected or not. This characteristic could maximize the efficiency of the official control. Lastly, another convenient characteristic is the configurable filters. Configurable filters allow the user to create different kinds of research that permits focus on one characteristic for example, the use of a logo, sale, or a particular ingredient. The software analyses text and logos, this type of analysis is permissible to cover the whole communication field for online food products. It also makes it possible to split the research according to the interest area that is to be analyse. It is possible to analyse the whole Italian market or only a specific town market selecting the area where the retail is done, or the type of food products, for example PDO or PGI or verify quality products through the analysis of the logo. It is also helpful that the decision is not totally left to the software, each component that uses an algorithm to elaborate the answer will also provide the confidence values of the result. This allows the user to make the ultimate decision about the success of the operation and if the levels of confidence are not high enough the analysis operation can be repeated.

As we can see the software is flexible, this characteristic made it suitable for many different applications that could help to reduce the work of the responsible authorities on planning official controls, identifying the source of the non-compliance and verifying if non-compliances have been corrected in a lot of different sectors.

CONCLUSIONS

This thesis work allowed the study of the practical and legal issues of official controls for foods in distance selling and it also permitted to identify a possible system to improve the quality and the accuracy of the controls on the online market.

From the study of the Regulation EU 1169/2011 and his article 14 regarding distance selling, it emerged that the label of the pre-packaged products that are sold online should be almost the same as that of the products sold through traditional selling methods. The only information that is not mandatory to give to the e-commerce consumer before the purchase is the one concerning the “use by” date or the “date of minimum durability”. This information is not mandatory because, with the device used for the distance selling, it is not possible to foresee the exact product that will be sent.

The market analysis showed that the online food market is constantly increasing and that Italy still has a lot of potential for growth. The investigation among the commerce chamber of Bolzano and Padua showed that the statement of the Director of the eCommerce B2c Observatory of the Politecnico di Milano, Riccardo Mangiaracina, applies to the case of the territories of Bolzano and Padua where, at the moment, the main market actors are small retailers. Despite this, following the world trend, the online shop service should end up growing and expanding and this will require an increasing of the controls on websites and on products that are sold through e-commerce.

From the contact with the local health authority and the Carabinieri has come to the light that, at least in the areas of reference for the institutional systems those have been contacted, there is not a systematic control on the online selling product. Official controls are done mostly directly in the physical selling place, because usually it is a shop or a manufacturer that provides distance selling only as secondary activities. Considering that official controls are planned based on the Multiannual National Control Plan defined by the Ministry of Health and required by the regulation CE No 882/2004, it may be possible to assume that in the rest of Italy the situation is very similar.

The regulation CE No 882/2004 doesn't include e-commerce as potential field to be controlled. Contrary to the regulation CE no 882/2004 the regulation EU 2017/625, that repeals the regulation No 882/2004 and will be applied from 14 December 2019, includes e-commerce as a possible field to be controlled. With Article 36 this regulation introduced the possibility to use samples obtained through Mystery shopping for the official controls. The introduction of this new regulation requires the creation of an official control plan that also includes e-commerce.

Considering that, according to the current Italian legislation regarding sampling, most of the sampling operations need to be done by official authorities and also require the physical presence of a food business operator throughout the sampling; the sampling through mystery shopping does not allow for specific sampling operation, some of which are considered fundamental for the accuracy of the analysis. It is therefore necessary to implement legislation to better regulate the sampling process.

Regarding the official controls on the information contained in the websites such presentation, advertising, labels, sale denomination and description of the products the work done by the ICQRF mainly addresses PDO and PGI products. A possible implementation of this kind of controls on e-commerce has been analysed studying the software prototype developed by Germany's Federal Office of Consumer Protection and Food Safety working together with Hamburg University of Applied Sciences and the Institute of Food Technology and Food Chemistry of Berlin University of Technologies.

The software prototype concept automatically identifies and evaluates potentially non-compliant e-food products basing its control activity on configurable filters. These allow the user to create different kinds of researches which allow to focus on the desired characteristics of the products. It is therefore possible to analyse the products according to the logo, the text (an ingredient), the selling area and so on. The software can then be applied in very specific fields. The software makes an automated analysis and can process a large amount of data without ignoring retail activity; it also constantly repeats the monitoring process keeping constantly updating the information regarding the correction of the non-compliance. Doing so the software maximizes the analytical process and creates a condition that is impossible to reproduce through manual analysis. The use of the software also gives a storage

of website information including the URL and the site's legal notice that can allow the official authorities to have a register of the online retail activities. This register can be helpful to keep track of the market and plan official controls. Another crucial factor is that the decision is not totally left to the software because with the answer it also provides the confidence value of the result and then it is up to the user to make the ultimate decision about the success of the operation. The software is flexible and this characteristic makes it suitable for many different applications that could help to reduce the workload of the responsible authorities on planning official controls, identifying the source of the non-compliance and verifying if non-compliance has been corrected or not.

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