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ANALYSIS AND ASSESSMENT OF THE NEW EUROPEAN AGRI-FOOD LAW IN THE CONTEXTS OF FOOD SAFETY, SUSTAINABLE DEVELOPMENT AND INTERNATIONAL TRADE

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Law is not simply a matter of regulation, just as economy cannot be equated with econometrics or sociology with surveys. The vital heart of law, its spirit and what remains unexpressed, lies within the submerged part of a world associated with regulation, but neither so clearly visible nor so strictly legal.
Law is like a language: its “vocabulary” constitutes its wealth; its “grammar” ensures its coherence and its cultural roots make it to express its “social values”. Now, by changing the vocabulary and grammar of a language, we are risking to separate it from its cultural roots and weaken its fundamental values. It is also true for agri-food law, as for any other area of law.

1. STATE-OF-THE-ART AND OBJECTIVES

1.1 CONCEPT

Between 2002 and 2007, Europe renewed two fundamental policies, the agricultural policy and the policy on food safety. During the same period, Europe began to work out a new 'strategy' qualified as one of sustainable development. This strategy, which still remains essentially environmentally oriented, is in the process of being used on the agricultural sector and the entire industrial sector including the food sector.

About 40% of the EU budget is spent on the new agricultural policy which is founded on two European regulations complemented by several other texts drawn from different fields of law such as environmental law, agricultural law, animal rights, land law etc. This set of regulations and laws constitutes a new legislation which is quite dispersed and fragmented and deals partly with food safety through agriculture and animal husbandry. The new European base of this entire legislative package began being implemented at different dates in different countries with effect from 2006.

The new policy on food safety concerns the leading economic sector in France and in Europe in terms of turnover. It is based on an initial European regulation adopted in 2002 there again complemented by a high number of national, European and international texts equally drawn from different fields of law – business law, consumption law, health law, international private law and competition law. The new European base of this legal set which is applicable to all the economic operators working within the food and agricultural sector including partly farmers is being progressively implemented since 2005.

The new European agri-food law which is rooted in agriculture and is being extended to the industrial sector is thus the product of these recent, important and complex revolutions and evolutions.

We should be prompt to observe that this new European agri-food legislation translates a real legal metamorphosis, a metamorphosis rendered inevitable in order to respond to three essential concerns
• improving and unifying the level of food safety in Europe;
• putting food legislation and the European strategy of sustainable development in phase;
• transcribing the environmental, cultural or social values Europe wishes to defend on the issue of food into the new agri-food law and defining different legal useful models within the World Trade Organisation.

1.1.1 THE FIRST STAKE, which concerns sanitary and food safety, justified modifying the structure and the contents of the new agri-food law which has henceforth a pyramidal structure with general principles expressed at its summit followed by general obligations, prescriptions and rules of implementation. In terms of content, it is a horizontal law, the same principles of precaution, transparency, self-control and traceability applicable to all operators and all categories of food unlike

what used to obtain before. This new law is extremely fragmented and disparate, a fact that might hamper its understanding. This is why there is need to make it formally and substantially homogeneous in order to study it afterwards, to develop its teaching and legal research at universities, to make it more easily accessible to economic operators working within the European food and agricultural sector and to diffuse its contents to non European countries wishing to have their food and agricultural products accepted in Europe.

Now such a project has never seen the light. At the moment, no legally oriented university or doctrinal study nor any global presentation of this new set of agri-food law exist. Many monographs exist on such specific aspects as food safety, signs of quality, rules of hygiene, the rights of consumers and laws governing wine but a piece of work which treats agri-food law as a coherent whole is lacking in Europe.

Such a situation can first be explained by the way legal studies are organized. They are structured around general fields (civil law, laws on liability, commercial law, competition law, consumption law...) rather than on specific fields focused on an object of law (food, animals, energy ...). The products/entities around which special laws are made are exceptional and include among others land (ground/land law), paid employment (labour law) and intellectual property (copyright law). Given the high economic and social stakes involved, it appears imperative in our opinion to seek the coherence and homogeneity of this complex legal set made up of texts emanating from a variety of sources and fields and having diverse contents in order to formally establish a special branch of law around food.

To embark on such establishment, one must first delimit the field of agri-food law, assemble the texts which deal specifically with food but emanate from different sources, international, European and national, and isolate the specialized concepts around which it is structured. Secondly, such an establishment entails giving to agri-food law a structure which would enable us to reflect on it as if it constituted a homogeneous entity. To do this, what I suggest is the use of a very rigorous method to mark out the entire field of study. The structure can then be established using the following elements: context, general setting, law governing operators, law governing products, law governing exchanges. An undeniable scientific difficulty faces such a study. This emanates from how to bring together different fields of law (agricultural law, business law, health law, consumption law, economic law, environmental law, international law...) which are neither informed by the same legal principles nor are usually examined one from the perspective of the others. There is an additional difficulty in trying to make a synthesis between these diverse legal fields around the specific entity of food. Now, such blendings and such a synthesis are indispensable if we want agri-food law to emerge and be recognized as a new, coherent and accessible field of legal study that can be critically examined. Thirdly, how homogeneous the new European agri-food law is conditions its pertinence, measured in terms of the growth of its corresponding economic sector. If this law lacks homogeneity and coherence, it might likely inhibit economic development. If it is homogeneous and coherent, it can be an engine of growth. Now from a quick look at the basic concepts in agri-food law, we can foresee some serious difficulties in how to make these compatible with common law concepts applicable to the entire economic sector including food and agriculture. To give some examples, we can underline:

- the difficulty of harmonizing the application of the 'precautionary principle' used in the specific agri-food law with the common law “principle of prudence”.
- the difficulty of establishing the much needed complementarities between the common law concepts of 'causality' and “imputability” and that of 'traceability' specific to agri-food law.
- the difficulty of establishing links between the concept of “defect” (defective products) which is central to common law of liability and that of “danger” (dangerous products) central to specific agri-food law.

There is therefore a very important task of determining the key concepts in European agri-food law, as well as confronting these with corresponding concepts drawn from the other fields of European and national laws dealing directly or indirectly with food. Such a study has yet to be embarked on since no constructed and structured agri-food law existed in Europe before 2002.

It is true that some concepts (such as the “precautionary principle” applied on the environment, or the concept of “danger” or “risk” used in insurance law) existed anyway. However, these were given new and original definitions when they were taken up by agri-food law.

1.1.2 CONCERNING THE SECOND STAKE which relates to sustainable development, one must be able to identify within this new agri-food law not only what will contribute to economic development in Europe but will enable the promotion of non-market oriented, environmental, social and cultural values within Europe and around the world. Such a task means we must define what is to be understood by the concept of sustainable development. The initial definition given by the Bruntland Report identifies two key components: the reduction of poverty and the environmental protection (United Nations, “Report of the World Commission on Environment and Development”. General Assembly Resolution 42/187, 11 December 1987)

The connection between agri-food law and the concept of sustainable development opens two complementary fields of research. On the one hand, it enables us to examine in precise terms the concept of sustainable development in the light of complementary market-oriented and non market-oriented values borne by agri-food law. On the other hand, the degree to which the new agri-food law fits into the European strategy of sustainable development can be established.

Both fields of research are difficult to conduct and will have very unsettled results because the issue of sustainable development is generally raised at the pre-production stage. The question is raised in terms of environmental protection, in other words centred, from the perspective of agri-food law, on what is injected into the earth while producing. Well, such a question needs to be rather raised from the perspective of what the earth provides (agricultural products) and what is produced by industries until their final consumption, a study that hasn't yet been engaged.

There are lots of results to expect from such works of research. These include providing substance to the vague concept of sustainable development and making it possible to use such a concept in legal terms in the agri-food sector where it is yet to be employed. In addition, they would enable extending the use of the concept of sustainable development well beyond the exclusively environmentally defined considerations that have often accompanied its use. Then such works of research would enable us test out the 'durability' of European agri-food law. However, such research works have an unsettled field.

It is therefore necessary to elaborate and to experiment a new method which would make a legal phenomenon tally with the objective of sustainable development. Because existing methods are oriented towards environmental protection, they are founded on a scientific approach (a cost/benefit assessment in economic and environmental terms). However, how do we capture sustainable development in relation to food that comes out of the earth, is either transformed or industrially produced, and thus is uninformed by considerations surrounding environmental protection? We have to imagine a new method, called “triple test”, based on three principles with a content specially determined: principle of growth (economic), principle of prudence (environmental and health) and principle of progress (social). The “triple test” method then entails making sure that each decision, regulation or homogeneous set of rules and regulations takes each of these three principles into account. This “triple test” will enable us to find out if the new conception of the European agri-food law is compatible with the objective of sustainable development. This will also enable us to see how this entire European agri-food law should be interpreted and applied in order to match the objective of sustainable development.

1.1.3 IN TERMS OF THE THIRD STAKE, defending social and cultural values linked to food within the World Trade Organisation (WTO), the field of study is wider and in addition more complex. The Marrakesh Agreements which transformed the GATT into the World Trade Organisation conceived the exchange of agricultural and food products from the perspective of two principles, the free circulation of goods on the one hand and safeguarding the health of individuals, animals and

plants on the other. Now, some countries and peoples are increasingly demanding that cultural, social and religious values among others be taken into account.

For example, the Agreement on Technical Barriers to Trade acknowledges that a country has the right to take measures to protect the health and life of individuals and animals, to preserve plants and to protect the environment in the degree it considers appropriate. The Agreement on Sanitary and Phytosanitary Measures deals with regulations which relate to how innocuous food products are, to animal health and to the preservation of plants. It acknowledges that governments are empowered to adopt such regulations but that the same regulations have to be applied only when there is the necessity to protect the health and life of individuals and animals or to preserve plants. Such regulations shouldn't create arbitrary or unjustified discrimination between member-states where identical or similar conditions exist.

To what extent do these diverse WTO agreements give states the leeway to preserve social, cultural and environmental values they deem important? Such leeway is undoubtedly constrained at least for the developed countries but it is still useful to explore what the legal texts allow or will allow in the future.

Concerning developing countries, such leeway could expand with the Doha Round negotiations on agriculture. Actually, the last version of such negotiations (WTO February 2008) expanded their latitude to distort competition through adopting policies and services targeted at regions with agricultural populations, engaging in land reforms, defining rural development policies and engaging programmes designed to guarantee subsistence in the rural sector. Such policies could facilitate providing infrastructural services, land restoration, soil conservation and the management of resources, the management of situations of drought and the fight against flooding, programmes of employment in the rural area, nutritional safety, the delivery of deeds of property and populating programmes all designed to promote rural development and reduce poverty. But these negotiations failed on July 2008.

Nevertheless, this list clearly shows that development is partly conditioned by a non market-oriented approach which links land and food.

Nevertheless, the possibilities of preserving social, cultural or environmental values at the international level remain extremely limited. Recent decisions made by the Organ for the Disputes settlement within the WTO show that the international legal system is quite unreceptive to the non market-oriented values evoked by member states and especially by the EU. However in the end, such a situation may likely lead to a rejection of this purely market-oriented global legal system by populations, something that may generate serious tensions, conflicts and violence.

Generally, these research undertakings will enable us to analyse the new European agri-food law, to examine its structure, its consistency, its contents, its autonomy, and thus to make it better known as a new legal discipline as well as an object of research and equally to achieve social and economic ends.

Such undertakings will also enable us to evaluate the new European agri-food law in the light of other fields of European law, of key national laws, of international law made by the WTO, and of the different legal systems existing around the world. This should enable us to test out the solidity and efficiency of this law and gauge its capacity to serve as a reference point in the regulation of the international trade on agricultural products and food.

1.2 FIELD AND CONTEXT OF THE RESEARCH

The agri-food industry includes all of the operators whose activity, upstream or downstream, depends on agricultural production. From the manufacturer of agricultural materials or fertilizers down to the retailer, this sector groups together the activities of production, manufacture, processing, storage, transportation and distribution of foodstuffs and animal feed. The unity of this group was economic

before becoming legal as well. Prof. Lorvellec, who at the time of his death was regarded as one of the initiators of the research about agri-food law, considered it some 20 years ago to be "one of the least known and most recent parts of rural law" (Droit rural, Masson, 1988, n° 988, p. 411). In fact, agri-food law originated in agricultural law. But today, what was once only part of food legislation has become separate and forms a new branch of law, particularly as the result of two judicial revolutions that brought about a radical change.

Firstly, agricultural law, while not calling into question the possibility of practicing traditional family agriculture, has been endowed and enriched with the most basic concepts and legal instruments of corporate law and free market economy, that is, those facilitating acquisitions and concentrations of firms, competition, growth of investments and credit, development of intangible values, reinforcement of signs of quality and other techniques related to intellectual property. This first revolution combines national laws and that of the European Union, from the reform of the Common Agricultural Policy in 2003 to the enactment of the French laws of 2006 and 2007. It is essential to perform a thorough analysis, to the extent that this revolution prefigures the division predicted by Louis Lorvellec between traditional, environmental agriculture, that is, open to environmental protection and benefiting from the objective of sustainable development, and a liberal agriculture open to competition and the market: "*The orientation toward a two-tier agricultural system seems inevitable in the long run. At one level, a productive agriculture working according to the most modern methods, probably free to choose its structures of production, its outlets and its marketing methods, will occupy the most profitable zones and be subjected to ordinary company law, without benefiting from state aid. At the other level, an agriculture benefiting from state aid and subsidies will develop in natural zones which its non-intensive methods will help preserve. Protected and controlled, this form of agriculture will on the contrary be subjected to a complex law combining state intervention, social law and environmental law"* (op. cit., n° 9, p. 5).

Secondly, a new "food law" appeared in Europe beginning with EC regulation n° 178/2002 of 28 January 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. This basic text replaced a profusion of technical regulations (fragmented and segmented) with an organized and homogeneous body of laws structured in the manner of Romano Germanic systems of civil law. This regulation assigns objectives, creates the organs and procedures for governing and controlling the agri-food sector, and submits all of the resulting laws to a respect for general principles (precaution, transparency, risk analysis, protection of consumer interests, etc.). This new food legislation, calling for an overall in depth analysis, currently nearing completion, has been gradually applied since 2005. The conjunction during the years 2002 to 2007 of recent developments in agricultural law with the enactment of new food legislation in Europe has led today to the creation of a radically changed agri-food law and thus to the emergence of a new branch of law. But this new branch of law is not yet well delimited, well known, well analysed.

1.3 OBJECTIVES

1.3.1 FIRST OBJECTIVE: The main purpose of the present research project is to give to agrarian and food law the necessary impulse that will allow it to take its place within the community of university jurists and in law schools in Europe. Another purpose is to apply a legal approach in support of the national and international social debate concerning the food industry, and its agricultural and industrial sources.

With respect to all these legal aspects, it can only be determined, once these veritable revolutions occur in the structure, nature and content of agri-food law, to what degree this law plays only a residual role in the juridical academic world, despite the economic importance of the food sector. Agricultural law is losing momentum because of the non-replacement of teacher-researchers who have resigned their positions and of the inducement for younger academics to turn to the more classic fields of the economic world (e.g. corporate law). Moreover, the number of law courses and of jurist colleagues taking up agri-food law even partially is quite limited.

The development of research activities is also slowed by the lack of any doctrinal work covering the global field of agri-food law. In fact, no such work has ever existed in Europe. Finally, in the world of European university jurists, the "agrarian" part of agri-food law is hardly more than a simple branch of the law concerning land law and patrimonial law. The "food" part has no real recognized existence inasmuch as it can only claim to be a slightly "exotic" branch of corporate and business law. In other words, land and food are only seen as goods like many others, that is, objects of market trade and freely-consented contracts.

So, it is necessary to establish the complete corpus of reference for European and international agri-food law. This corpus provides an opportunity for testing the internal coherence of this law and thereby determining whether the creation of a new branch of law will be conducive to establishing its separate status. Secondly, by giving formal recognition to the body of agri-food law, young jurists and future doctoral students and colleagues will be able to better understand the philosophy, the orientations and the issues. They could thus, with full knowledge of the facts and recognition of the interest involved, choose it as their field of study or at least refer to it in their works. Thirdly, the establishment of a corpus of reference would make this branch of law more accessible to economic decision-makers to whom it applies as well as to consumer organizations. This last aspect is not the least, for example as indicated in the works conducted, with my assistance, by the National Food Council in France and by the expectations of its members (representatives of farmers, agri-food businesses, consumers, administrations…) in legal matters. They are waiting for a concrete analysis of the new companies' duties and the new consumers' rights. And to realize it, it is necessary to have a theoretical analysis of the new European agri-food law at one's disposal.

1.3.2 SECOND OBJECTIVE: To determine the legal content of the concept of sustainable development as applied to the agri-food socioeconomic sector, and also determine how and to what extent the new agri-food law accommodates this social, economic and environmental objective.

This radical change in agricultural law and in agri-food law has obviously been very significant for legal questions concerning food and the use of the soil. It is of particular importance since agri-food law must henceforth take the perspective of sustainable development into account. This development is not by any means limited to economic growth alone or environmental protection. The concept integrates (among other things) a better consideration of the basic needs of individuals, especially in terms of access to farmland, food and water. It supposes a consideration of the legal, economic, social and environmental consequences of the rules or decisions envisaged.

In the field of law, the concept of sustainable development has until now been especially the object of research into its environmental aspects (soil pollution, protection of biodiversity, combating global warming, etc.). This achievement is certainly considerable, and the resulting developments in environmental law are clearly apparent. But there appear to be a lack of national, European or international studies analyzing the concept with regard to food production and market trading. In this respect, the fair trade concept, for which thorough legal analysis is lacking, tends to take precedence over sustainable development, at least in the minds of consumers. In other words, with regard to food and agri-food law, the integration of the objective of sustainable development still needs to be performed.

This integration should take place at two different levels. In fact, the regulation of sustainable development can only be referred to the law and the state, even though it is not limited to that. Regulation without specific rules can only lead to giving operators power over themselves. Moreover, this type of regulation will not be effective in the food sector unless it is extended beyond questions of environmental agriculture to include all aspects of agri-food law. Regulation No. 178/2002 provides an explicit example when it recommends, in order to determine whether a food is dangerous to health, to seek the probable effect not only on the immediate consumer but also on his descendants (art. 14, §4, a).

1.3.3 THIRD OBJECTIVE : To demonstrate the shared and non-market values for which this branch of law is or should be a key contributor, particularly with reference to the objective of sustainable development, in order to define various legal models for the international food trade law, adapted to Peoples' cultures and to different legal systems in the world.

It is my intention to apply a national and international legal approach, supported by multidisciplinary research, in performing an analysis and criticism of agri-food law based on the notion that food, which relates to nature, culture, health and religion, and constitutes a condition of life inseparable from the individual, cannot be regarded by the law as ordinary merchandise. Nor can soil and animals, the initial sources of our food supply, be considered as ordinary goods. In fact, in the case of food derived from an animal, the law is eminently concerned with the well-being of the animal and the conditions of its slaughtering. The animal, situated midway between individuals and things, has a special status in nearly all religions and cannot be reduced to simple merchandise. Moreover, food links man to the soil which, as a "total social fact" according to Mauss, cannot be considered as mere merchandise. The soil is a gift and not acquired, limited and not extendable, fragile and not renewable, and which must be shared by an ever greater number of persons. Thus, the human being has developed since his origins in relation to a territory that he has made his own, which is his source of nourishment and the resting place of his dead.

It is this non-mercantile aspect, the shadowy part of agri-food law, which the present research project intends to cast light on. With respect to the globalization process, recognition of the existence of this shadowy aspect may constitute the first element common to different states, cultures, religions and legal systems and thus represent a point of departure in the search for values constituting the common heritage of humanity.

It seems clear that food cannot be reduced to the status of simple merchandise. Thus, it is essential to determine to what extent different cultures and the various systems of agri-food law have taken this non-mercantile aspect of food supply into account.

First, it is therefore necessary to identify within European agri-food law, the underlying values that are unlinked to or rejected by the different texts which regulate food trade (GATT, the Marrakesh Agreement). The focus is particularly on the Agreement on Technical Barriers to Trade and the Agreement on Sanitary and Phytosanitary Measures. To what extent do these diverse WTO agreements give states the leeway to preserve social, cultural and environmental values they deem important? Such leeway is undoubtedly constrained at least for the developed countries but it is still useful to explore what the legal texts allow or will allow in the near future.

This is why this is the right time to embark on a very ambitious research project using Mauss's works on legal anthropology as a model. We must seek the underlying social and cultural values in our European agri-food law and find out the extent to which these values have roots which may likely go back as far as when agriculture began. The deeper such roots are, the more these values need to be formalized and respected. The social, cultural and religious roots which have since time immemorial moulded how we relate to land and to food must be sought in our history and if need be in the proto-historical and even the pre-historical periods.

What cannot be doubted is that something essential is intertwined around land and territories which have always been the abode of our departed and their spirits while providing us with what to feed our animals and the vegetables we eat. The 'land-animals-food' connection is undoubtedly the source of the first rules governing living together and afterwards how agriculture is organized. (This explains why I have used the acronym "Lascaux" to entitle my application).

So, how does the new European agri-food law preserve records of some of these original values in Europe? Are the preserved records 'European' or specific to a particular European legal tradition? In other words, are they transcribed in the civil law system of the countries belonging to the Latin world similarly as or differently from how they are in Anglo-Saxon common law countries?

At the international level, which values are borne by the different legal systems around the world right from their origins in relation to land and to food? What modifications need be made on the current and unified WTO law to ensure the continuous respect of these values when still intact in some countries? Undoubtedly, such a research project needs to be preferentially experimented in the regions where these legal roots are the most easily accessible and in countries characterized by legal pluralism (for example in some African countries with a combination of civil and customary law or a combination of civil and Islamic law like in Lebanon). The reason is that no system of legal pluralism lasts long if it is unable to reconcile the social, cultural and religious values of the different populations to which it applies.

Using a legal perspective to examine agri-food law and in the light of works done by archaeologists, pre-historians, proto-historians and agricultural historians, we thus must identify the records of non market-oriented values that continue to be borne by integrated (national or continental) legal systems and are rooted in Peoples' cultures.

Such a research undertaking has never been carried out from a legal perspective with the aim of establishing connections of a legal nature between the very distant past and the present. If it is carried out, such a research will be able to generate important legal results. In actual fact, it will lead to:
- No longer treating food and land as ordinary merchandises;
- Ensuring that agri-food law respects non market-oriented values;
- Testing out the extent to which European (International) law is adapted to the culture of the peoples who constitute Europe (the World).

1.4 CONCRETE GOALS AND EXPECTED RESULTS

- Result 1 : To publish a code of food-processing law presenting in a coherent and rational manner, in different languages (at least in French, English and Spanish, possibly in Chinese), the legislation applicable (international included).

- Result 2 : To publish (in different languages) a doctrinal reference work on European agri-food law, with an interdisciplinary part, which would be the first of its kind in Europe. This work will be formalized as a scientific specialized book and/or an encyclopaedic dictionary in a classical or digital form. This work will check the coherence of European agri-food law concepts with those of general and international laws, and the compatibility of European agri-food rules with the legal concept of sustainable development.

- Result 3 : To establish different legal models of international commercial trade law, adapted to People's cultures and compatible with the different legal systems in the world. This result will take shape, as a conclusion of this project, with the publication of proceedings of an international dedicated symposium.

METHODOLOGY

2.1 OVERALL METHODOLOGY

2.1 FIRST SCIENTIFIC STAGE: To publishing the complete corpus of reference for European and international agri-food law

There is no work available in Europe treating the discipline of agri-food law in its entirety. Thus, in carrying out this research project, it is essential and primordial to establish an initial corpus of reference for agri-food law. Despite its structure based on Romano Germanic law, agri-food law is characterized first of all by the "porosity of its borders". With respect to its sources, there is a fragmentation among European rules (the most numerous ones), pre-existing law of national origin and international law, in particular that emanating from the World Trade Organization (Marrakech

agreements, “Doha cycle”, Codex alimentarius, etc.). With respect to its nature, the bits and pieces of agri-food law relate to various standards and technical and/or scientific regulations forming the infra-law, and to general, civil, penal, commercial and administrative laws constituting the common corpus applicable to all economic sectors.

This fragmentation causes several basic difficulties, namely in creating a coherent law, coordinating this law with general law and determining the essential values likely to form the basis of international agri-food law.

This aspect of the research project will lead to the preparation of two complementary works to be performed with the assistance of a high level research team :

Workpackage 1: Preparation of the Agri-Food Code
This WP consists in the preparation of a code of agri-food law presenting in a coherent and rational manner, in different languages (at least in French, English, Spanish and possibly in Chinese), the European legislation applicable (international included).

Workpackage 2: Preparation of the doctrinal corpus of reference ;
This WP consists in the preparation of a doctrinal reference work on agri-food law, which would be the first of its kind in Europe. This activity will be elaborated and disseminated as a scientific specialized book and/or an encyclopaedic dictionary (published in different languages : Cf. WP1).

To do this, what I suggest is the use of a very rigorous method to mark out the entire field of study. The structure can then be established using the following elements:

- the context (socio-economic, political, legal)
- the general setting (sources of agri-food law, principles, institutions, procedures of crisis)
- the law governing operators (cooperation, integration, joint-trade organizations…)
- the law governing products (safety, quality, identity, liability)
- the law governing exchanges (contract, competition, consumption, international trade)

2.2 SECOND SCIENTIFIC STAGE: To verify that the related used legal vocabulary used be amenable to concepts and notions applied elsewhere. This stage will lead, not only to confront agri-food law vocabulary with concepts of civil law (contract law, tort law, property law…), but also to confront the same vocabulary with concepts of socioeconomic law of which it comes (environmental liability, sectors…).

When a new branch of law is created and established as a separate entity, it can gain in coherence, which facilitates access to its content, comprehension and interpretation of its rules. Nonetheless, the creation of a special new branch can cause ruptures with general law (civil law, commercial law, etc.) or with international law. Thus, it is important not to increase the number of “orphaned standards”, that is, those separated from their closest kin. This risk justifies that a substantial analysis of the special law be performed to search for conceptual or notional discrepancies. In agri-food law, this type of discrepancy is not rare, precisely because of the diversity of its sources. Two examples can illustrate the work to do at this stage:

Firstly, some national or international texts determine that operators are responsible when they introduce *defective* foods on the market, whereas others relate this responsibility to *harmful* foods. Thus, there is a risk of a “conceptual short circuit”. A food can be defective (e.g. bad taste) without being harmful. But can it be harmful without being considered defective? In terms of the harm/defect relation, a food can be considered as identical to a medicine or a knife, both of which are potentially harmful and yet not defective.

Moreover, the adoption of a special text establishing the precautionary principle in food legislation, but differing from that instituted in environmental law and in the French constitutional charter, could produce another example of conceptual short-circuit. In fact, this difficulty could be worsened, in terms of the civil responsibility of operators, because of the relationship between this principle and the general principle of caution.

Secondly, conceptual difficulties can result from "flexible qualifications", that is, those which are deformable. Thus, when development becomes "sustainable" or trade becomes "fair", non-mercantile values enter into market behaviour and relations, and these can no longer be justified only by reference to free-market contracting or individual will. The same is true when we attempt to define the "quality" criteria of a food within the conceptual set "quality/defect/conformity".

In a system of civil law (ie. continental European law), it is indispensable to establish coherence between the principles and concepts of special branches of law and general law because such coherence affects how the rules of the special branches of law are interpreted.

In order to carry out this research work and verify the coherence between agri-food law and general law, we need to use key agri-food law concepts as the foundation. These concepts are identified by European regulations themselves. For each concept, we need to check if the definition provided by the EU coincides with that given by one branch of general law or the other. If the definition given by the branch of general law differs, we will then need to compare the concept with related concepts with which it may not tally. This finally means applying on agri-food law the same approach used in the past to explore the different branches of law applicable to some economic sectors like rural and real estate law.

Workpackage 3: Coherence between the agri-food concepts and those in general law
The work will be planned in phases over 5 years, parallel to workpackage 2 (doctrinal reference work), in order to identify the concepts and notions and to analyse their potential integration (or contradictions) within a new hard law code.

2.3 THIRD SCIENTIFIC STAGE: To elaborate and to experiment a new method which would make a legal phenomenon tally with the objective of sustainable development

It is necessary to elaborate and to experiment a method in order to determine the content of the sustainable development concept useful in agri-food law. In fact, we need a method which would make a legal phenomenon tally with the objective of sustainable development. Because existing methods are oriented towards environmental protection, they are founded on a scientific approach (a cost/benefit assessment in economic and environmental terms). However, how do we capture sustainable development in relation to food that comes out of the earth, is either transformed or industrially produced, and thus is uninformed by considerations surrounding environmental protection?

I am proposing to explore sustainable development using an experiment based on a "triple test". This triple test emanates directly from the three component parts of the concept of sustainable development current in the EU : the economic, the social and the environmental. These three component parts however remain vague and it is necessary to capture them in more specific terms. This will be done using EU texts which apply them concretely in a particular branch of European law:
• "Commission staff working document - Accompanying document to the Communication from the Commission to the Council and the European Parliament Progress Report on the European Union Sustainable Development Strategy 2007" (SEC/2007/1416 final)
• "Communication from the Commission to the Council and the European Parliament - Progress Report on the Sustainable Development Strategy 2007" (COM 2007/642 final)
• "Opinion of the European Economic and Social Committee on the 'Biennial Progress Report of the EU Sustainable Development Strategy" (2007/C/256/15)

• “Outlook opinion of the Committee of the Regions on the contribution of local and regional authorities to the European Union's sustainable development strategy” (2007/C 197/05)
• “Opinion of the European Economic and Social Committee on Sustainable development in agriculture, forestry and fisheries and the challenges of climate change” (2006/C 69/02)
• “Opinion of the European Economic and Social Committee on Sustainable development as a driving force for industrial change” (2006/C 318/01)
We will equally capture the three components in more precise terms by a complementary use of available literature in the social sciences on sustainable development and the collaboration of researchers in economics and sociology.
The work on exploring the concrete indications of the component parts of the concept of sustainable development will take off during the international symposium to be held at Laval University in Quebec in September 2008 where I shall present results of a study identifying 'the role of the objectives of sustainable production and consumption in the new European agri-food law'. Once the symposium held, the research work will revolve around using the triple test to verify if the application of agri-food law respects the imperative orientations of sustainable development.
In actual fact, the will to concomitantly respect three principles can be observed in relation to sustainable development:

• the “principle of growth”, operationalized in terms of economic efficiency, productivity, enrichment, economic development or growth.

• The “principle of prudence” which can be operationally described in terms of the protection of the environment and of biodiversity, security of supply, sanitary safety and the protection of public health.

• The “principle of progress” seen concretely in terms of the reduction of poverty, ethics, equity and justice and the satisfaction of the interest of consumers.

The “triple test” method then entails making sure that each regulation or homogeneous set of rules and regulations takes each of these three principles into account.

For example, the new European strategy of sustainable development implemented with effect from 2007 aims notably to reduce obesity. This has led to drawing up a policy of public health, national and European public authorities making decisions and legal dispositions to guide their implementation being defined. This set of dispositions should simultaneously contribute to economic growth (for example through favouring the development of competitive markets surrounding light products or inciting, through appropriate legal measures, the reduction of the proportion of fat, sugar or salt in products), to prudence in health (for example through controlling adverts on television on sweetened products which are targeted at young children) and to social progress (for example regulating the level of 'rear profit margins' established by mass distribution retail outlets in order to limit price hikes and allow the underprivileged to have balanced meals.

Workpackage 4: Adaptation of the legal concept of sustainable development to agri-food law and sector. Beyond this example, what we are planning to do, which is totally new, is to use this triple test to evaluate the entire European agri-food law. This will enable us to find out if the new conception of the European agri-food law is compatible with the objective of sustainable development. This will also enable us to see how this entire European agri-food law should be interpreted and applied in order to match the objective of sustainable development.

2.4 FOURTH SCIENTIFIC STAGE: Research human values in relation to their consequences on the legal pluralism in the World, in order to define legal models for the international food trade

Once internal coherence (grammar) and tested concepts (vocabulary) have been provided and confronted with sustainable development concept, it will be necessary to relate this new branch of agri-food law, whose essential source is within the European Union, to the history and cultures in

which it is rooted. This will be the most delicate part of the research project, but certainly not the least necessary nor the least interesting.

It is clear that food makes us aware of our relation to nature and can cause very severe distress if we as consumers discover that nature has been violated. This reaction was apparent in the 1990s when certain animals were contaminated by a pathogenic agent of bovine spongiform encephalopathy transmitted in the meat or bone meal with which they were fed. The fact that these non-carnivorous animals were fed with products from other animals contributed to the severity of the social crisis parallel to the health crisis. This incident was largely responsible for the decision of the European Union to design new agri-food legislation. Today, the sensitive issue of employing genetically-modified organisms, which has once again emphasized a risk of violating nature, is indicative of continuing consumer susceptibility. Moreover, this latter violation is twofold, operating at both ends of the food chain, since it involves the presence of GMOs in the seeds planted in fields and in the foodstuffs offered to consumers (with greater or lesser transparency). The same problem exists with food derived from cloned animals.

It is apparent that law today cannot result simply from political decisions or scientific assessment, but must also reckon with the subconscious of individuals. This introduces an important difficulty for the jurist-researcher since such investigations are not customary in his experience. But this requirement is also an advantage for this researcher who is requested to compose the texts based on common values that will regulate future international trade. By going far back in our cultures, it may be possible to find the trace of the distress common to all humanity and determine the initial base on which common values and common law exists.

If in this manner we begin our research for the "hidden values" on which *homo sapiens* has built, especially in his relations to soil and food as in his first distress at the violation of nature, it will be necessary, with protohistorians, sociologists and anthropologists researchers, to consider the manifestations of conscience that he experienced, whether during the period of his nomadic life (territorial occupations, "artistic" achievements, "religious" behaviour) or the period of sedentary existence and the first developments of agriculture and cattle-raising. Without being paradoxical, it may be said that there are sources at Lascaux, Ouadi el Natouf, the Celtic fields or Magny sur Moselle which help us understand today's agri-food law. Our closest legal relation to the soil (territory), animals and food is rooted in these origins. The search for these hidden values in our common roots will probably provide a better understanding of the pluralism of values that are expressed today and sometimes enter into competition—a pluralism to which the diversity of cultures and of continental histories has led.

From a methodological point of view, and apart from the analysis of our common origins, we need to search for the values essential to each culture and establish a common base of values rather than a base of common values. The differences in values, principles or fundamental rights relative to soil and food supply do not make these factors irreconcilable. At each stage, the research should be directed toward the numerous countries with a dual legal culture, which have succeeded in devising mixed systems ensuring "legal peace" (a veritable common law), sometimes when "intercommunal political or social peace" was not feasible. Such is the case of South Africa (a mix of civil and common law), Lebanon (a mix of civil and Moslem law), black Africa (a mix of customary law and either civil or common law), and of course the European Union for which common law is based on traditions of civil and common law.

So, the method will consist in:

Workpackage 5: Anthropological research of human and social values in relation to land and food

To research with protohistorians, sociologists, anthropologists, philosophers and agricultural historians the rules/values in our agricultural history and social life history.

Workpackage 6: Determination of different legal models for the regulation of the international food trade

To research in the new European agri-food law, in Human rights and in social actuality, the traces and marks of those rules/values.

And then, we intend to compare these values with those which underlie the international trade law, and to compare these traces, marks and values in the different world legal systems in order to define different legal models for the international trade law.

In reality, it is by respecting these values that it will be possible to establish models of international trade law in line with legal systems existing in different regions of the world. Only such a model can enable us to move beyond national self-centeredness, something that was precisely lacking during the WTO negotiations in 2008, the Doha Round.