

- **The EU's new *Guidance on Forced Labour* is paving the way for mandatory due diligence**
- **Ensuring stable supply chains: The *EU – Ukraine Strategic Partnership on Raw Materials***
- **EU Member States' authorities order withdrawal of products with the presence of ethylene oxide in the food additive locust bean gum (E410)**
- **Recently Adopted EU Legislation**

NOTE TO SUBSCRIBERS

Dear Friends and Readers of Trade Perspectives®,

Please note that Trade Perspectives® will take an editorial break during the WTO's August recess and will resume its fortnightly publication schedule on 10 September 2021. We thank you for your continued interest in Trade Perspectives® and look forward to starting again with renewed energy and enthusiasm our dialogues on international trade and food law as of this Autumn.

The Trade Perspectives® Team

The EU's new *Guidance on Forced Labour* is paving the way for mandatory due diligence

On 13 July 2021, the European Commission (hereinafter, Commission) and the European External Action Service (hereinafter, EEAS) published their *Guidance on due diligence for EU businesses to address the risk of forced labour in their operations and supply chains* (hereinafter, Guidance). The Guidance aims at supporting EU businesses to address the risk of forced labour in their economic operations and supply chains. The Guidance arrives a few months before the Commission is expected to publish its legislative proposal on *Sustainable Corporate Governance*, which would introduce mandatory due diligence regarding compliance with human rights, social, health, and environmental rules. While raising compliance costs for businesses, commitments on trade and sustainable development and due diligence requirements play an increasing role to mitigate some of the perceived negative effects of global supply chains.

The growing importance of social and environmental commitments

In recent times, EU trade policy has undergone significant changes. In 2015, the Commission had started placing greater emphasis on labour rights and environmental matters. These issues have become important factors in the context of the EU's trade agreements. The issue of sustainability and the chapters on Trade and Sustainable Development are now important parts of trade negotiations and of the EU's preferential trade agreements.

The EU and EU Member States have also been increasingly active in developing policies to improve supply chains due diligence and to make supply chains “*more sustainable*”. In its *Commission Staff Working document - Corporate Social Responsibility, Responsible Business Conduct, and Business and Human Rights: Overview of Progress*, the Commission states that the EU is committed “*to promoting the implementation of responsible business conduct across all sectors of production and all levels of the supply chain*”. In 2020, the Commission launched a legislative initiative on ‘*Sustainable corporate governance*’ with the stated objective of encouraging businesses “*to frame decisions in terms of environmental (including climate, biodiversity), social, and human impact for the long-term, rather than on short-term gains*”. The Commission is expected to publish its legislative proposal in October 2021.

On 18 February 2021, the Commission published its Communication on the EU’s *Trade Policy Review - An Open, Sustainable and Assertive Trade Policy* (see *Trade Perspectives, Issue No. 4 of 26 February 2021*), which contains a commitment to provide guidance to assist EU businesses in addressing and taking appropriate measures regarding the risk of forced labour.

Assisting EU businesses to address the risk of forced labour in supply chains

The Guidance provides EU companies with a “*practical guidance to implement effective human rights due diligence practices*”. It has the objective to help companies eradicate forced labour from their value chains by providing practical guidance on how to assess and identify forced labour and how to mitigate and address the risk of forced labour.

The Guidance relies on the international definition of ‘*forced labour*’ provided in the International Labour Organization’s (ILO) *Forced Labour Convention* of 1930, which defines it as “*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*”. Regarding the term ‘*due diligence*’, the Guidance relies on the definition provided in the United Nations’ (UN) *Guiding Principles on Business and Human Rights* and the *Guidelines for Multinational Enterprises* developed by the Organisation for Economic Co-operation and Development (OECD). The Guidelines define ‘*due diligence*’ as “*the process that businesses should carry out to identify, prevent, mitigate and account for how they address actual and potential forced labour risks in their own operations, supply chains and business relationships*”.

The Guidance provides three sections that are supposed to assist businesses to understand how to address and mitigate the risk of forced labour when implementing due diligence:

- 1) **Practical aspects:** This part focuses on the OECD due diligence framework and aims at guiding companies to conduct effective due diligence by identifying and addressing the potential and actual adverse human rights and environmental impacts linked to their operations, products, and services, including in their business relationships;
- 2) **Specific considerations for forced labour:** This part lists the specific considerations that businesses must take into account in the context of forced labour when: 1) Carrying out in-depth risk assessments of specific high-risk suppliers; 2) Taking action to address the risk of forced labour; 3) Dealing with risks of State-sponsored forced labour; 4) Considering responsible disengagement; and 5) Considering remediation; and
- 3) **Cross-cutting considerations for conducting responsible business:** This part provides additional elements that might become relevant and that must be considered when implementing due diligence, such as the consideration of gender inequality and ethnic or religious minorities.

The Guidance also provides a section listing the international instruments or initiatives addressing responsible business conduct and due diligence. In particular, it lists the relevant EU legislation on specific sectors where due diligence requirements are already implemented,

for instance in the context of [Regulation \(EU\) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas](#) (the EU's Conflict Minerals Regulation).

EU measures addressing human rights and environmental matters

The new Guidance follows existing EU mechanisms already in place against forced labour, such as the provisions included in the in Chapters on Trade and Sustainable Development of several EU trade agreements and in the EU's Conflict Minerals Regulation.

The EU's Conflict Minerals Regulation, which entered into effect on 1 January 2021, refers to minerals that are extracted in conflict-affected areas, more specifically to minerals from the Great Lakes region of Africa (*i.e.*, Burundi, the Democratic Republic of Congo, Kenya, Rwanda, Tanzania and Uganda) and under conditions that violate human rights and where the exploitation of such minerals is linked to forced labour and to the contribution to the funding of armed groups or conflicts (see [Trade Perspectives, Issue No. 7 of 7 April 2017](#)). The Conflict Minerals Regulation covers the trade of tin, tantalum, tungsten and gold and is the first EU Regulation to establish mandatory EU supply chain due diligence requirements for importers of those raw materials, in order to reduce human rights violations. In this context, due diligence requires the companies concerned to apply supply chain controls in all conflict-affected or high-risk areas, in order to identify the risk of funding harmful activities. The Regulation follows the approach set out in the [OECD's Due Diligence Guidance](#). EU Member States are tasked with the supervision of compliance with the obligations and the imposition of penalties.

Upcoming mandatory EU due diligence legislation

While the Guidance is a non-binding document aimed at supporting businesses, it already gives an idea of what companies should consider in light of the upcoming EU mandatory due diligence on human rights, as well as social and environmental matters. In October 2021, the Commission is expected to publish its legislative proposal on *Sustainable Corporate Governance*, which would introduce mandatory due diligence regarding compliance with human rights, social, health, and environmental rules. From October 2020 to February 2021, the Commission had held a public consultation on the legislative initiative on *Sustainable Corporate Governance* and stated that this initiative aimed at improving “*the EU regulatory framework on company law and corporate governance*”, while also helping “*companies to better manage sustainability-related matters in their own operations and value chains as regards social and human rights, climate change, environment, etc.*”

In this context, on 10 March 2021, the European Parliament adopted the [European Parliament Resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability](#). The Members of the European Parliament called on the Commission to adopt “*a binding EU law that ensures companies are held accountable and liable when they harm – or contribute to harming – human rights, the environment and good governance*”.

While the EU legislative initiative on mandatory due diligence is still in the preparatory stages, some EU Member States have already adopted measures in this field. For instance, on 11 June 2021, Germany adopted the *Act on Corporate Due Diligence in Supply Chains (Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten)*, which will enter into force in 2023 and which establishes obligations for companies concerning human rights and certain environmental standards violations within their supply chains.

Time for businesses to get ready and review their supply chains

Complying with due diligence rules is poised to be challenging for businesses operating in the EU. The upcoming EU mandatory due diligence legislation looks poised to affect an increasing number of sectors and industries. All relevant stakeholders should closely monitor the issue

and get involved in the discussions. Another public consultation is still expected to be launched once the Commission publishes its legislative proposal.

Ensuring stable supply chains: The EU – Ukraine Strategic Partnership on Raw Materials

On 13 July 2021, in order to secure a sustainable and resilient value chain for raw materials, the European Commission's Vice-President for Interinstitutional Relations and Foresight *Maroš Šefčovič* and Ukraine's Prime Minister *Denys Shmyhal* signed a *Memorandum of Understanding (MoU) between the European Union and Ukraine on a Strategic Partnership on Raw Materials*, endorsing a roadmap for its implementation that is supposed to kick-start various activities along the value chain of primary and secondary raw materials and batteries for electric vehicles. On this basis, the EU and Ukraine seek, *inter alia*, closer collaboration in geological and mining exploration, extraction, refining/processing, transport, and monitoring. Given the continued strategic importance of raw materials for the global manufacturing industry, in particular for environmentally-friendly technologies, this article highlights the underlying concerns and policies surrounding the cooperation on raw materials, as well as related initiatives, such as the *EU – Ukraine Strategic Partnership on Raw Materials*.

The importance of raw materials to achieve carbon neutrality

In December 2019, the European Commission (hereinafter, Commission) published the *European Green Deal*, a set of policy initiatives that represents the EU's main growth strategy to transition its economy to a more sustainable economic model. The overarching objective of the *European Green Deal* is to reduce greenhouse gas emissions by 55% by 2023 and then to net zero by 2050, focusing on eight policy areas. The *European Green Deal* puts a strong emphasis on energy, which accounts for more than 75% of the EU's greenhouse gas emissions. To reduce the figure, the EU aims at shifting towards clean energy by securing affordable energy supply and developing a power sector based largely on renewable sources.

Delivering on green energy will involve the large-scale deployment of renewable technologies, such as wind and solar power. The rate of deployment of more environmentally friendly technologies will increase the demand for relevant critical raw materials (e.g., rare earths, bauxite, and lithium). For instance, lithium is necessary for the production of batteries for electric vehicles, and platinum to produce clean hydrogen cells. An *in-depth study* by the Commission, conducted in 2018, shows that, in order to satisfy the expected growing demand for electric vehicle batteries alone, the EU would require up to 18 times more lithium and 5 times more cobalt in 2030 than it consumes now, and almost 60 times more lithium and 15 times more cobalt in 2050.

The EU is dependent on imports of raw materials

Raw materials are considered crucial to the EU's economy, where approximately 30 million jobs are directly related to the access of raw materials. However, the EU has no access to domestic raw materials in the form of rare earths and only limited access to other key minerals. There are also gaps with respect to the capacity for, *inter alia*, processing, recycling, refining, and separation of raw materials, making the EU 75% to 100% dependent on the supply from other countries. In 2020, the value of total trade of raw materials between the EU and the rest of the world amounted to EUR 133 billion, with imports accounting for EUR 79.6 billion. Certain minerals, such as lithium, although mined in Europe, have to leave the continent for further processing. While raw materials could be sourced from different regions across the globe, the EU industry's imports of critical raw materials are highly concentrated: 98% of EU's rare elements are imported from China; 98% of borate originates in Turkey; and 71% of platinum, along with iridium, rhodium, and ruthenium, are sourced from South Africa.

Protectionist approach on securing the supply of minerals calls for cooperation

The limited availability of critical raw materials in certain countries is not only caused by their natural occurrence, but also by the implementation of restrictive domestic regulations and export policies in certain markets. In recent years, a number of countries have increasingly introduced restrictive measures on the export of minerals, resulting in supply shortages and price fluctuations. Export restrictions have already triggered disputes within the World Trade Organization (WTO). In 2010, China restricted the trade of rare earths, tungsten, and molybdenum, by imposing export quotas, duties, and limitations on trading rights of enterprises with export permissions. The EU, Japan, and the US initiated a dispute against China's restrictions, claiming that China's export policies were inconsistent with certain WTO disciplines. While China argued that the restrictions were related to the conservation of its exhaustible natural resources and necessary to reduce pollution, the WTO Panel and the WTO Appellate Body sided with the complainants' view, namely that the restrictions were rather designed to provide Chinese downstream industries with preferential and protected access to the relevant materials. In January 2015, China repealed the relevant measures in line with the Panel ruling.

The most recent case regarding export restrictions of minerals involves Indonesia, which, on 1 January 2020, introduced a ban on nickel ore exports, and intends to ban all metal ore exports from June 2023. Additionally, Indonesia imposes domestic processing and/or refining requirements prior to the exportation of certain raw materials. According to the EU, these measures impair its benefits under the relevant WTO agreements by restricting the access to necessary materials for the production of stainless steel. The EU considers the measures to be "*inconsistent with the prohibition of export restrictions in Article XI:1 of the General Agreement on Tariffs and Trade (GATT) 1994*". Consultations in the context of WTO dispute settlement were held with Indonesia on 30 January 2020. However, they failed to resolve the matter and, on 29 April 2021, a WTO Panel was established to examine the complaint.

The almost total dependence on imports of such raw materials, particularly from China, means that the EU's supply is affected by conflicts, trade monopolies, and domestic measures of its trading partners. In certain cases, the industry is highly exposed to vulnerabilities caused by the limited availability of substitutes for the materials. Against this backdrop, mitigation efforts to improve the supply chain of raw materials and to prevent the disruption of manufacturing processes are considered necessary, particularly in order to attain the objectives under the *European Green Deal*. In 2020, the EU issued its *Action Plan on Critical Raw Materials*, which highlights the EU's initiative for "*open strategic autonomy*" by developing its own supplies of lithium and rare earths and, at the same time, by diversifying imports and reducing the reliance on imports. Those objectives are to be achieved by reinforcing the use of certain EU trade policy tools, cooperating in international *fora*, negotiating preferential trade agreements, and engaging in strategic partnerships with resource-rich third countries, such as Ukraine.

A positive step amid the existence of export restrictions on raw materials

The EU's partnership with Ukraine can be considered as a positive development in mitigating the impacts of the limited supply of raw materials and production concentration. Prior to the signing of the *Memorandum of Understanding*, both Parties had initiated a focused dialogue on Ukraine's green transition within the framework of the *European Green Deal*, as well as on horizontal issues and specific industrial sectors. In general terms, the partnership includes activities along the entire value chain of primary and secondary raw materials and for the production of electric batteries. The critical raw materials addressed under this partnership consist of 30 materials recognised in the *2020 EU Critical Raw Materials List* (e.g., tungsten, lithium, cobalt and bauxite), which lists the materials that are highly important to the EU economy, along with the respective supply risks and which aims at incentivising the production of critical raw materials and prioritising related actions. Out of the 30 critical raw materials, 21 are available in Ukraine (e.g., lithium, nickel, titanium and zirconium).

The Strategic Partnership *provides for* a strong public-private multi-level partnership between both Parties' representatives of, *inter alia*, institutions and bodies, industrial actors, business associations, and relevant ministries. It will build on the existing economic links between the EU and Ukraine, as established under the *EU-Ukraine Association Agreement* and the related *Deep and Comprehensive Free Trade Area*.

The *Memorandum of Understanding* identifies three work streams that provide an overview of the steps and actions that will be taken by both Parties in the course of their partnership: 1) Approximation of policy and regulatory mining frameworks; 2) Integration of the critical raw materials and battery value chains; and 3) Research and innovation:

Work stream	Remarks
1) Approximation of regulatory mining framework, and environment, social and governance criteria	<ul style="list-style-type: none"> • It concerns the implementation of sustainable mining practices by monitoring the regulatory extractive industry frameworks and aligning them with environmental, social and good governance criteria. • The Parties agree to work on, <i>inter alia</i>: 1) Continued cooperation to improve the legal, regulatory and administrative framework stimulating the development of extractive industries; and 2) Regular exchange of information regarding application of existing international standards on due diligence and related certification schemes for sustainable production/sourcing of raw materials.
2) Integration of the critical raw materials and battery value chains	<ul style="list-style-type: none"> • It involves the integration of primary and secondary critical raw materials value chains by facilitating the participation of joint venture stakeholders in business opportunities. • Both Parties see the benefits in focusing on several types of collaboration, such as: 1) Cooperation in exploration of new primary and secondary critical raw materials deposits in Ukraine; and 2) Digitalisation and harmonisation of geological and mining documentation.
3) Research and innovation	<ul style="list-style-type: none"> • The Parties commit to strengthening cooperation on research and innovation along the critical raw materials value chain by, <i>inter alia</i>, reinforcing the participation of Ukrainian research and innovation entities in <i>Horizon Europe</i> (<i>i.e.</i>, the EU's key funding programme for research and innovation). • The Parties intend to cooperate in research on, <i>inter alia</i>: 1) Mining and urban waste management and circularity; and 2) Advanced materials and substitution.

Relevant stakeholders could be more involved in the raw materials supply chain

On 3 September 2020, the *European Raw Materials Alliance* (ERMA) was established based on the mandate of the EU's *Action Plan on Critical Raw Materials*. The ERMA is tasked with securing the sustainable supply of raw materials. The alliance, which is open and inclusive to all relevant stakeholders, is a collaborative platform tasked with identifying barriers, opportunities, and investment opportunities. One of its core objectives is to accelerate transactions between investors. With respect to the battery industry, the *European Battery Alliance* (EBA), which was established in October 2017, already allowed the EU to increase its market share for battery cell production and to secure investments in lithium mining and processing. Under the Strategic Partnership, Ukraine will also benefit from various investment platforms, namely the ERMA and the EBA. With Ukraine's significant potential for mineral resources, the creation of business opportunities for the EU's raw materials industry is also expected.

Pursuing concrete results

In view of the limited supply of critical raw materials around the world, coupled with the existence of export restrictions, the new Strategic Partnership between the EU and Ukraine is considered an important step to ensure a stable supply and to minimise adverse impacts due

to unpredictable future disruptions. The Strategic Partnership is supposed to generate more business opportunities and foster sustainable public and private investment in the EU, as well as in Ukraine. Such cooperative approach is certainly preferable to the introduction of trade restrictions to protect certain goods and markets, but it will also have to be scrutinised to ensure that it complies with WTO rules on non-discrimination.

EU Member States' authorities order withdrawal of products with the presence of ethylene oxide in the food additive locust bean gum (E410)

Following a notification via the EU's *Rapid Alert System for Food and Feed* (RASFF) of 8 June 2021 by Spain's competent authorities related to the presence of ethylene oxide in the food additive locust bean gum (E410) from Turkey, used notably in ice creams, the European Commission (hereinafter, Commission) convened on 29 June, 30 June, and 13 July 2021 the EU Member States' food and feed crisis coordinators, together with experts from the *European Food Safety Authority* (EFSA) regarding maximum residue levels of pesticides and on food additives. The objective of these meetings was to enhance coordination among EU Member States and to align the follow-up to the alert in question.

The presence of ethylene oxide in locust bean gum (E410)

Locust bean gum, also known as carob gum, is a galactomannan (*i.e.*, polysaccharides) vegetable gum extracted from the seeds of the carob tree and used as thickener, stabiliser, and gelling agent in food. It is authorised as additive E 410 in the EU by *Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives*. It has common applications in ice cream, yoghurt, bakery products, cheese, beverages, sauces, and dressing.

Ethylene oxide is used in a number of third countries to combat fungi and bacteria, in particular to reduce or eliminate microbiological contamination with Salmonella. The use of ethylene oxide for the disinfection of food is not permitted in the EU. According to, for example, Germany's Federal Institute for Risk Assessment (*Bundesinstitut für Risikobewertung*, BfR), ethylene oxide is carcinogenic and mutagenic.

Recall of thousands of products due to increased levels of ethylene oxide

In September 2020, Belgium was the first EU Member State that issued RASFF notifications regarding increased levels of ethylene oxide in sesame seeds from India. The related recalls are still continuing, with thousands of conventional and organic items with long shelf-life, such as cereals, chocolate, biscuits, bread, crackers, spices, and bagels, being affected. French authorities also recalled nearly 7,000 products, from sesame to ice cream, pepper, ginger, shallots, coffee, bread, cookies, and ready meals. In June 2021, France's Directorate General for Competition Policy, Consumer Affairs and Fraud Control (*Direction Générale de la Concurrence, de la Consommation et de la Répression des frauds*, DGCCRF) stated that it was informed about the presence of ethylene oxide in an additive used in ice cream, with recalls affecting brands including *Nestlé*, *Mondelez*, and *Picard*. The list of recalled products is regularly updated and available on the [website](#) of France's Ministry of Economy.

EU Member States' food and feed crisis coordinators

The EU Member States' food and feed crisis coordinators are not a specific body of the EU. They are convened by the Commission according to Section 3 of Chapter IV of *Regulation (EC) No 178/2002 of the European Parliament and of the Council 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* on 'Crisis management'. Article 55 of *Regulation (EC) No 178/2002* lays down a 'General plan for crisis management', according to which "1. The Commission shall draw up, in close cooperation with the Authority

and the Member States, a general plan for crisis management in the field of the safety of food and feed (hereinafter referred to as “the general plan”). 2. The general plan shall specify the types of situation involving direct or indirect risks to human health deriving from food and feed which are not likely to be prevented, eliminated or reduced to an acceptable level by provisions in place or cannot adequately be managed solely by way of the application of Articles 53 and 54”. The general plan is also to specify the practical procedures necessary to manage a crisis, including the principles of transparency to be applied and a communication strategy.

Commission Implementing Decision (EU) 2019/300 of 19 February 2019 establishing a general plan for crisis management in the field of the safety of food and feed establishes the EU’s general plan for crisis management in accordance with Article 55 of *Regulation (EC) No 178/2002*. The general plan is to apply, according to Article 2 of *Commission Implementing Decision (EU) 2019/300*, to food ‘incidents’, which are defined as the “detection of a biological, chemical or physical hazard in food, feed or humans which might result in or indicate a possible public health risk with the exposure of more than one person to the same hazard, or a situation in which the number of human cases or detections of a hazard exceed the expected number and where cases are linked or probably linked, to the same food or feed source”. The plan covers the following two types of situations: 1) Situations requiring enhanced EU coordination; and 2) Situations requiring the setting up of a crisis unit bringing together the Commission and relevant EU Member States’ authorities, as well as the competent EU agencies.

Each EU Member State, the EFSA, and the Commission all designate a ‘Crisis coordinator’, referring to a “person and his/her alternate from the European institutes and from competent authorities of Member States who acts as one single contact point to ensure effective exchange of information between all partners involved in the coordination of the general plan and efficient decision making and implementation of actions within the competence of his/her organisation”. According to Article 10 of *Commission Implementing Decision (EU) 2019/300*, enhanced coordination at the EU level is necessary when there is a direct or indirect public health risk by a detected hazard in food or feed that has been identified in two or more EU Member States with an epidemiological link (e.g., human cases and/or deaths in different EU Member States with reliable analytical or epidemiological evidence on such link) and/or a traceability link (e.g., distribution of possibly contaminated food or feed to different EU Member States); or a serious potential impact related to the detected hazard on the functioning of the internal market in the area of food or feeds that has been identified; and there is a major health impact related to the detected hazard; or disagreement on actions between EU Member States; or difficulty to identify the source of the risk.

EU Member States’ food and feed crisis coordinators meetings on ethylene oxide

At the meetings of the EU Member States’ food and feed crisis coordinators, coordinated by experts from the Commission and supported by EFSA experts on ethylene oxide, EU Member States expressed their views on how best to manage the risk presented by the products incorporating the incriminated additive within the framework of *Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin*, *Regulation (EC) No 1333/2008 on food additives* and *Regulation (EC) No 178/2002*. In response to demands from certain EU Member States, the Commission provided a legal analysis of the applicable law, which allowed an informed decision of all crisis coordinators on this incident of contamination of food with ethylene oxide.

According to the [Report](#) of the Food and Feed Crisis Coordinators meetings of 29 June 2021, 30 June 2021, and 13 July 2021 on the presence of ethylene oxide above the limit of quantification in locust bean gum (food additive E410), EU Member States stated that, in accordance with legal provisions set out in *Regulation (EC) No 178/2002*: “For the products that contain the additive E410 known to be contaminated with ethylene oxide (i.e., the additive containing a level of ethylene oxide above the LOQ (0.1mg/kg), applying the residue definition provided for in *Regulation 396/2005*), no safe level of exposure for consumers can be defined and hence any level consumers may be exposed to, presents a potential risk to consumers”.

EU Member States concluded that “consequently, it is necessary, in order to ensure a high level of health protection, that the food or feed business operators who have placed such products on the EU market shall, under the control of the national competent authorities, withdraw those products from the EU market, and recall them from consumers”.

LOQ stands for limits of quantification, which is the lowest analyte concentration that can be quantitatively detected with stated accuracy and precision. Although Belgium and Denmark announced to fully implement the above approach, both EU Member States expressed their concerns, at the meetings of the Food and Feed Crisis Coordinators, with the systematic recalls of all foodstuffs produced with a raw material above the legally set MRL. Notably, they expressed worries about the zero-tolerance approach applied to ethylene oxide. ‘Zero-tolerance’ refers to a limit of quantification where, as soon as ethylene oxide is detectable, products must be recalled. Both EU Member States considered this approach as contradicting the work carried-out on sustainability, reducing food waste, and food loss in line with the EU’s *Farm to Fork Strategy* and the United Nation’s *Sustainable Development Goals*. In fact, according to the [EU database for maximum residue levels](#), depending on the raw material, the EU MRL for ethylene oxide varies in a range of 0.01, 0.02 and 0.05 mg/kg and is often higher than the LOQ of 0.1mg/kg, meaning that products would not need to be withdrawn from the market, recalled from consumers and destroyed.

Conclusion

The incident of ethylene oxide in sesame seeds and locust bean gum demonstrates that coordination in case of food safety incidents by the Commission and the EU Member States convened in the Food and Feed Crisis Coordinators meetings is essential. The magnitude and financial costs of the withdrawal and recall from the EU market of thousands of products of many food business operators is huge. The opinions of Denmark and Belgium show that there is not always scientific and legal unanimity when it comes to food safety incidents. The decision-making process must, however, be science-based and transparent. Very few details as to the scientific and legal arguments made in the Food and Feed Crisis Coordinators meetings on the presence of ethylene oxide have been explained and provided in detail in the meetings’ Report. Interested and affected food business operators should carefully monitor developments.

Recently Adopted EU Legislation

Trade Law

- [Directive \(EU\) 2021/1233 of the European Parliament and of the Council of 14 July 2021 amending Directive \(EU\) 2017/2397 as regards the transitional measures for the recognition of third-country certificates \(1\)](#)
- [Council Decision \(EU\) 2021/1234 of 13 July 2021 on the conclusion of the Agreement between the European Union and the Kingdom of Thailand pursuant to Article XXVIII of the General Agreement on Tariffs and Trade \(GATT\) 1994 relating to the modification of concessions on all the tariff-rate quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom’s withdrawal from the European Union](#)
- [Agreement between the European Union and the Kingdom of Thailand pursuant to Article XXVIII of the General Agreement on Tariffs and Trade \(GATT\) 1994 relating to the modification of concessions on all the tariff-rate quotas included in the EU Schedule](#)

CLXXV as a consequence of the United Kingdom's withdrawal from the European Union

Food Law

- *Council Regulation (EU) 2021/1239 of 29 July 2021 amending Regulations (EU) 2019/1919, (EU) 2021/91 and (EU) 2021/92 as regards certain fishing opportunities for 2021 in Union and non-Union waters*
- *Commission Implementing Regulation (EU) 2021/1246 of 28 July 2021 amending Regulation (EC) No 1484/95 as regards fixing representative prices in the poultrymeat and egg sectors and for egg albumin*

Ignacio Carreño, Tobias Dolle, Alya Mahira, Lourdes Medina Perez, and Paolo R. Vergano contributed to this issue.

Follow us on twitter @FratiniVergano

To subscribe to *Trade Perspectives*®, please click [here](#). To unsubscribe, please click [here](#).

FRATINIVERGANO specialises in European and international law, notably WTO and EU trade law, EU agricultural and food law, EU competition and internal market law, EU regulation and public affairs. For more information, please contact us at:

FRATINIVERGANO – EUROPEAN LAWYERS

Boulevard Brand Whitlock 144, 1200 Brussels, Belgium. Telephone: +32 2 648 21 61, Fax: +32 2 646 02 70. www.fratinivergano.eu

Trade Perspectives® is issued with the purpose of informing on new developments in international trade and stimulating reflections on the legal and commercial issues involved. *Trade Perspectives*® does not constitute legal advice and is not, therefore, intended to be relied on or create any client/lawyer relationship.

To stop receiving *Trade Perspectives*® or for new recipients to be added to our mailing list, please contact us at TradePerspectives@fratinivergano.eu

Our privacy policy and data protection notice is available at <http://www.fratinivergano.eu/en/data-protection/>