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This issue of *Trade Perspectives*® looks at the interaction between trade and values or drivers that belong to the realm of public morals, religious requirements, and ethical choices made by consumers. These interactions are becoming more frequent and often lead to frictions, as they are used to achieve, or may be perceived to pursue, hidden agendas of economic protectionism and commercial discrimination. The World Trade Organization has rules to ensure that, when such values are the legitimate objectives of countries’ policies and measures, general exceptions allow otherwise illegal restrictions on trade, provided of course that there be no discrimination and proportionality in the regulatory design.

## **Farmed fur not a good fit for most EU citizens: A call for a ‘fur free’ Europe**

On 25 March 2022, the European Commission (hereinafter, Commission) published *Commission Implementing Decision (EU) 2022/482 of 16 March 2022 on the request for registration of the European citizens’ initiative entitled ‘Fur Free Europe’ pursuant to Regulation (EU) 2019/788 of the European Parliament and of the Council, relating to the Commission’s decision to register a European citizens’ initiative* concerning a European Citizens’ Initiative on a ‘Fur Free Europe’ submitted on 25 January 2022. While market and legal impediments dot the initiatives roadway, one wonders if this initiative is the beginning of the end for the fur trade in Europe.

### **EU citizens decide to take initiative**

The initiative on a ‘Fur Free Europe’ is the product of concerned EU citizens. The Treaty on European Union (hereinafter, TEU) provides that every citizen has the right to participate in the democratic process and the TEU, therefore, affords citizens, through *Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative*, the possibility of directly approaching the Commission by means of a European Citizens’ Initiative (hereinafter, an ECI) with a request inviting it to submit a proposal for a legal act. This is not to say that such initiatives are easy tools. On the contrary, once formally registered, an ECI requires one million citizens from at least one quarter of EU Member States to effectively “invite” the Commission to propose a legal act in areas where the Commission

has the power to do so. The conditions to register an ECI, as foreseen by *Regulation (EU) 211/2011*, are that the proposed action does not “manifestly fall outside the framework of the Commission’s powers to submit a proposal for a legal act”, that it is “not manifestly abusive, frivolous or vexatious”, and that it is not manifestly contrary to the values of the EU.

In the present instance, the ECI still has hurdles to clear. The Commission’s decision to register the ECI relates only to the legal admissibility of the initiative. The registration of the ECI on a ‘Fur Free Europe’, on 16 March 2022, kicked off a one-year period, during which the organisers may collect the required one million signatures of support. If that is successfully accomplished, the Commission must react, either by deciding to take the request forward or not. Either way, the Commission will be required to explain its reasoning.

### **‘Fur’get about it: the attempted ban**

Should the ECI eventually become law, it would add to a wide network of existent regulations related to the topics of animal health and welfare. EU animal welfare rules protect wildlife, pets, as well as farm and laboratory animals, and reflect the so-called five freedoms from: 1) Hunger and thirst; 2) Discomfort; 3) Pain, injury, and disease; 4) Fear and distress; and 5) Freedom to express normal behaviour. *Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation)* lays down animal and public health rules for the placing on the market and the import or export of animal by-products not intended for human consumption, including farmed fur. In addition, Paragraph 21 of the Annex to *Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes* provides that “the freedom of movement of an animal, having regard to its species and in accordance with established experience and scientific knowledge, must not be restricted in such a way as to cause it unnecessary suffering or injury”. Notably, there is precedent of an EU-wide ban on fur, in particular *Regulation (EC) No 1523/2007 of the European Parliament and of the Council of 11 December 2007 banning the placing on the market and the import to, or export from, the Community of cat and dog fur, and products containing such fur*, which bans the placing on the market and the import to or export from the Union of cat and dog fur, as well as products containing such fur.

For its part, the ECI seeks to “achieve an EU-wide ban on: a) keeping and killing of animals for the sole or main purpose of fur production; and b) placing farmed animal fur, and products containing such fur, on the EU market”. The organisers, a group of seven EU citizens represented by the Senior Campaigner, as well as the Communications Manager from Eurogroup for Animals, an animal protection lobby group based in Brussels, Belgium, that seeks to improve animal welfare standards in the European Union, claim that “fur farming is inherently cruel, since the vast majority of animals kept for its production are still essentially wild”, such as foxes. The organisers claim that, therefore, the animals’ behavioural needs “cannot be met in fur farms”, since “fur animals do not live in an environment that provides choice, proper housing or a species appropriate comfortable resting area”. The behavioural restrictions inflicted on fur farmed animals “can only lead to negative experiences such as pain, fear and frustration and exclude the potential for positive experiences”. When it comes to other domestic animal species, like rabbits and chinchillas, the organisers of the ECI argue that “the purpose of keeping animals in small cages and killing them solely or mainly because of the value of their fur cannot be legitimised either”.

The organisers of the ECI defend the proposed measures based on what they consider to be developing social mores on the issue within the EU. In addition to citing polling data on the subject (public poll by *Four Paws and Eurogroup for Animals*), the organisers note that merely “implementing more stringent rules for fur production would contravene the opinion of the majority of EU citizens who care about animal welfare and are opposed to keeping and killing animals for fur”. The organisers further note that several EU Member States, namely, Austria, Belgium, Croatia, Czechia, Estonia, Germany, Luxembourg, the Netherlands, Slovakia, Slovenia, and Italy, have already banned fur farming on animal welfare grounds, with emphasis

on the fact that the requirement in paragraph 21 of the Annex to *Council Directive 98/58/EC* “*simply cannot be met*”. Other EU Member States have imposed partial bans focused on particular species, such as mink farming (e.g., Denmark, France, Hungary, the Netherlands, and Sweden), and some are considering the adoption of legislation to ban fur farming (e.g., Bulgaria, Lithuania, Poland, Latvia, Ireland, and Spain). Whilst these developments are legitimate, they create national divergences that could distort the EU’s internal market. The organisers cite their proposed ban as promoting intra-EU market efficiency through harmonisation of standard practice.

Of course, this is not the organisers’ sole justification for the proposed ban. Proponents of the ban also decry the potentially deleterious impact that fur farming poses on “*animal and human health as well as to native biodiversity*”. The organisers point out that “*hundreds of mink farms were affected by coronavirus outbreaks and new virus variants of SARS-CoV-2 were found to have been transmitted to humans*”. Relating to the environmental impact of the fur industry, the organisers claim, *inter alia*, that “*pollution from fur factory farms often has a devastating effect on local water bodies, soil, and air quality*”. In this respect, the organisers draw particular attention to the dressing and dyeing of fur, a process that generally involves the use of many toxic chemicals.

### **A ban based on ethical concerns**

While the organisers of the ECI are focussed on the ethical aspects of their proposal, there are market and trade dynamics at work as well. About 60% of all animals in the fur industry are kept and skinned in Europe, which means that the remaining large part of the fur used in the EU is imported. According to the European Commission’s Directorate-General for Trade, in 2021, the EU imported ‘*Tanned or dressed furskins*’ mainly from China (at a value of EUR 51,6 million), Turkey (at a value of EUR 15.2 million), Brazil (at a value of EUR 6.8 million) and Argentina (at a value of EUR 4.9 million). Animal cruelty free alternatives to fur, such as, bio-based fur (from vegetable crops), and recycled faux fur could receive a bump in demand if the EU were indeed to adopt an EU-wide ban on farmed fur.

The legality of an EU ban affecting the sale of imported farmed animal fur, and products containing such fur, could face obstacles on the basis of the EU’s commitments under the World Trade Organization (hereinafter, WTO). For example, such a ban may run afoul of Article XI of the General Agreement on Tariffs and Trade (hereinafter, GATT) providing for a ‘*General Elimination of Quantitative Restrictions*’. Then again, the EU could invoke, *inter alia*, the general exception contained in Article XX(a) of the GATT, which allows for otherwise GATT-inconsistent measures to be justified if they are deemed “*necessary*” to protect public morals. Like all invocations of Article XX of the GATT, this involves a two-step analysis relating to provisional justification (in this case under Article XX(a)) and a check for consistency of the measure with the *chapeau* of Article XX of the GATT.

With respect to a provisional justification of Article XX(a), WTO dispute settlement panels and the WTO Appellate Body have generally given deference to WTO Members asserting that a measure has been put in place to protect public morals. Notably, this includes the *EC – Seals Products*, dispute, which, like the present situation, involved a measure, largely instigated by citizens, taken to protect animals that concerned a ban introduced by the EU on the trade in seal products – albeit with limited exceptions. This deference notwithstanding, there have been a growing number of respondents appealing to the ‘*public morals*’ exception and one wonders whether future WTO panels might deem it necessary to course-correct in order for the exception not to swallow the rules. More specific to a potential case relating to the ECI on a ‘*Fur Free Europe*’, it would be interesting to see how a panel might weigh the relative importance of the fact that the measure would be citizen-initiated. For example, would this fact be deemed to evidence the measure as being in line with the EU’s ‘*public morals*’? These are interesting questions, but it is far too early to predict any outcome of potential dispute settlement.

## From initiative to action: a look at the road ahead for the citizens' initiative

If a European Citizens' Initiative receives one million statements of support within one year from at least seven different Member States, the Commission will have to react. The Commission would have to decide either to take the request forward or not, and would be required to explain its reasoning. Were the initiative to prove successful, it would place itself alongside a number of EU-regulations and directives related to issues like human and animal rights and sustainability that may attempt to justify GATT inconsistency with an appeal to the public morals exception contained in Article XX(a) of the GATT. Time will tell whether WTO dispute settlement panels will welcome this approach or view it with suspicion.

## Indonesia introduces a new *halal* logo: A moment to revisit the country's *halal* market landscape

Effective from 1 March 2022, Indonesia's previous *halal* logo, the familiar green emblem, has been officially replaced with a new, purple logo issued by Indonesia's Ministry of Religious Affairs' Halal Product Assurance Organising Agency (*i.e.*, *Badan Penyelenggara Jaminan Produk Halal*, hereinafter, BPJPH). The alteration of the logo also marks an important change in the governance of *halal* certification in Indonesia, with the BPJPH taking over the responsibilities of the Assessment Institute for Food, Drugs, and Cosmetics of the Indonesian Ulama Council (*Majelis Ulama Indonesia*, hereinafter, MUI), as provided by [Law No. 33 Year 2014 concerning Halal Product Assurance](#) (hereinafter, *Halal Law*), with respect to conformity assessment and *halal* certification, including the recognition of foreign *Halal* certification bodies and mandatory labelling. Gradually, the logo issued by the MUI will no longer be recognised.

### Governance changes as the rationale for the new *halal* logo

The introduction of the new *halal* logo can be considered a notable step in the complicated governance transition of Indonesia's *halal* regime. The MUI's previous responsibilities in *halal* certification led to criticism by domestic producers and foreign businesses. In 2017, Australian business operators alleged corruption within the MUI's management of the certification process. The MUI's monopoly over the issuance of *halal* certification was also reported to Indonesia's Business Competition Supervisory Commission. While the change of governance was formally introduced in 2014, the BPJPH did not assume its new authority until October 2019, when the *Halal Law* entered into effect, five years after its original enactment (see [Trade Perspectives, Issue No. 21 of 13 November 2020](#) and [Issue No. 4 of 26 February 2021](#)). Despite the BPJPH's new role, the MUI remains involved in the *halal* certification regime, notably in terms of the recognition of certifying bodies and in the issuance of *fatwas* (*i.e.*, formal ruling or interpretation on a matter of Islamic law) with the involvement of experts, relevant ministries and related institutions on the determination of *halal* products through the required *Fatwa Hearings*. The BPJPH also relies on the MUI, *ad interim*, for the appointment of *halal* auditors.

### Transitional period for businesses

Prior to the official introduction of the new logo, in accordance with the [Head of BPJPH Decree 40 of 2022 concerning the Stipulation of Halal Label](#), many business operators were still using the previous MUI *halal* logo on their product packaging. To facilitate the transition, the Government provides businesses with a phase-out period. More specifically, products that obtained a *halal* certificate from the BPJPH prior to 1 March 2022 may still be placed on the market with the previous logo attached and/or affixed, until stocks are depleted. Nonetheless, Article 169(d) of [Government Regulation No. 39 of 2021 concerning the Implementation of Halal Product Assurance](#) stipulates that the MUI *halal* logo may only be utilised until 1 February 2026.

## Revisiting Indonesia's *halal* regime

Under Indonesia's *Government Regulation No. 39 of 2021*, business operators still have a grace period until 17 October 2024 to comply with *halal* certification. By 2034, the *halal* certification requirements will have been expanded to non-food and beverage products, such as drugs, cosmetics and medical devices. For instance, traditional medicines and health supplements must be *halal* certified and labelled by 17 October 2026. With this requirement, business operators must comprehend Indonesia's *halal* regime and take steps to comply with the *halal* certification and labelling obligation, as non-compliance with the provisions of the *Halal Law* will result in the imposition of administrative sanctions in the form of warnings, fines, the revocation of the *halal* certificate, and withdrawal of goods from circulation.

## Foreign businesses can make use of international *halal* cooperation to facilitate trade

To ensure that foreign-*halal* certified products can enter Indonesia's territory in compliance with the *Halal Law*, the Government of Indonesia allows for international *halal* cooperation. There are three types of cooperation stipulated in the *Minister of Religious Affairs Regulation No. 2 of 2022 concerning International Cooperation on Halal Product Assurance*, namely: 1) The development of *halal* product assurance; 2) Conformity assessment; and 3) The recognition of *halal* certificates. Such cooperation can be done in the form of a government-to-government *Memorandum of Understanding*, or through bilateral agreements, which may include pre-existing trade and economic agreements. The mutual recognition of *halal* certificates is probably the most trade-facilitative area of international cooperation provided in Indonesia's *halal* regime, as *halal* certification from a BPJPH-approved foreign *halal* authority would be automatically recognised in Indonesia. *Memoranda of Understanding*, which could lead to the mutual recognition of *halal* certification, have so far been signed by BPJPH on behalf of Indonesia's Ministry of Religion with the Foreign Ministries of Chile, Argentina, and Hungary. However, the implementing arrangements under these MOUs have yet to be settled, thereby mooting the potential trade facilitation objectives.

## Indonesia aims at becoming an international hub for the *halal* industry

Considering Indonesia's potential market for *halal* goods and services, President *Joko Widodo* has set a target for Indonesia to become a global hub for the *halal* industry by 2024. According to the *Indonesian Halal Markets Report 2021/2022*, published by the *Indonesia Halal Lifestyle Center* and the *Dinar Standard*, Indonesia has the largest domestic *halal* economy market in the world, driven by the largest global Muslim population of 229.6 million in 2020. Domestic spending on *halal* products and services amounted to USD 184 billion in 2020 and is projected to increase by 14.96% compound annual growth rate (CAGR) to reach USD 281.6 billion by 2025.

In light of this, Indonesia's Ministry of Industry and the BPJPH are supporting the establishment of *halal* value chains and ecosystems through the establishment of *halal* industrial areas to facilitate and develop industries that produce *halal* products according to Islamic principles. These industrial areas will have integrated industrial processes, including research and development centres, food technology polytechnics, *halal* quality management systems, sharia funding institutions, ports, and customs facilities. Pursuant to the *Minister of Industry Regulation No. 17 of 2020 concerning the Procedures for Obtaining a Certificate of Establishment of a Halal Industrial Estate*, industrial estate companies that have complied with the Regulation's criteria will obtain an official certificate of *halal* industrial area. To date, three *halal* industrial estates have been established, namely the Modern *Halal* Valley in Serang, the *Halal* Industrial Estate in Bintan Inti, and the *Halal* Industrial Park in Sidoarjo.

## Elements of possible WTO inconsistency?

The change in the governmental authority administering *halal* certification in Indonesia from the MUI to the BPJPH is not all that noteworthy from a WTO law perspective. Rather, what is potentially more consequential is whether (and how) the certification requirements will be

altered and whether such alterations might lead to discrimination, *de jure* or *de facto*, between or against imported “*like*” products. This will undoubtedly be on the minds of countries that export *halal*-certified products to Indonesia as the transition unfolds. Non-discrimination provisions are a notable feature of WTO law, not only in the context of the General Agreement on Tariffs and Trade (hereinafter, GATT), but also in the Agreement on Technical Barriers to Trade (hereinafter, TBT Agreement). This latter agreement is potentially important in the present instance, as labelling requirements recognising certain standards could be deemed “*technical regulations*” under Annex 1.1 of the TBT Agreement. The applicable non-discrimination provisions in the GATT (e.g., Articles I and III) and under the TBT Agreement (e.g., Article 2.1, which relates to technical regulations and Article 5.1.1, which pertains to conformity assessment procedures), would then be relevant in ascertaining the WTO-consistency of, *inter alia*, the methodologies employed by the BPJPH in approving foreign *halal* authorities.

In addition to the principles of non-discrimination, the applicability of the TBT Agreement presents further obligations that must also be respected, and which may be relevant to the transition. On a more benign level, these obligations might pertain to notification requirements related to particular changes in certification, to more substantive requirements, such as the dictate of Article 2.2 of the TBT Agreement that “*technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create*”. All of this is not to imply that the certification requirements set forth by the new governance authority, the BPJPH, will run afoul of one or more obligations under the TBT Agreement or the GATT. Rather, it is simply a recognition that there are potentially applicable obligations relating to the transition and that those obligations must be recognised and respected.

### **More opportunities for trade and investment?**

Indonesia is a net exporter of *halal* products in aggregate, although it is still import-dependent on many specific *halal* products, such as pharmaceuticals, cosmetic products, and processed food and beverages. In 2020, the country exported *halal* products with a total value of USD 46.7 billion, consisting of food, fashion, pharmaceuticals, and cosmetics. Indonesia could become the top exporter of *halal* products, but it needs to increase domestic production capacity to develop import substitution strategies.

As the largest Muslim population, the country has also become a lucrative economy for *halal* investments. The establishment of *halal* industrial estates is expected to increase foreign investment, as it will provide easier *halal* licensing and provide a more integrated *halal* standardisation for investors through adequate facilities in accordance with *halal* standards. Indonesia’s Ministry of Industry will further propose export incentives for companies located in *halal* industrial areas, continue its import-substitution program, and support the *halal* product technology process development, as well as export assistance. Potentially all these policies and support schemes may be problematic vis-à-vis the applicable WTO rules and would have to be properly scrutinised.

The opportunities provided by Indonesia’s growing *halal* industry render this sector attractive for both Muslim consumers and for investors. From a consumer perspective, there is access to a wide range of goods and services that are *halal* certified, which provides a sense of security and assurance. From an investor perspective, the large Muslim population, coupled with Government-supported facilities, offers huge potential for businesses to grow. Since Indonesia’s new *halal* regime is still developing, interested exporters and investors should closely monitor future developments, including any upcoming regulatory changes.

## Feed shortages in the EU lead to increased imports of genetically modified maize, while EU Member States are permitted to be flexible on pesticide residues

In view of the war in Ukraine and related shortages of feed supply, the European Commission (hereinafter, Commission) has temporarily authorised Spain to place on the market maize from Argentina and Brazil with higher pesticide residues than established by EU law. At the same time, the EU is expected to import increased amounts of genetically modified (hereinafter, GM) animal feed from the US and South America. This article analyses the legal doorway that the Commission has opened regarding pesticide residues in maize and the apparent change to its policy of imports of GM maize.

### The setting of temporary national Maximum Residue Levels in EU Member States

On 11 March 2022, EU Member States' delegates met in the EU's Standing Committee on Plants, Animals, Food and Feed (Section Phytopharmaceuticals – Residues) to discuss a request from several trade associations to address the expected shortage of animal feed in light of the war in Ukraine. Ukraine is a major source of imported cereals (mainly maize, wheat, rye, oats, barley), and oilseeds (sunflower, rapeseed and soyabeans) for several EU Member States. According to the [summary](#) of the meeting, the Commission noted that trade associations had reached out to alert on the situation and pointed to the “*need to secure imports from other third countries, but that stricter Maximum Residue Levels (MRLs) in the EU compared to those in third countries or compared to Codex Limits could pose problems to actually source commodities there*”. The Commission referred to the possibility that EU Member States facing acute shortages have recourse to Article 18(4) 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](#), which enables EU Member States to quickly set temporary national MRLs.

Article 18(4) of [Regulation \(EC\) No 396/2005](#) provides that, “*In exceptional circumstances, (...), a Member State may authorise the placing on the market and/or the feeding to animals within its territory of treated food or feed not complying with paragraph 1 [i.e., with the established MRLs], provided that such food or feed does not constitute an unacceptable risk. Such authorisations shall immediately be notified to the other Member States, the Commission and the Authority, together with an appropriate risk assessment for consideration without undue delay with a view to setting a temporary MRL for a specified period or taking any other necessary measure in relation to such products*”.

EU Member State may only take such measures in case of “*exceptional circumstances*” and in the absence of “*unacceptable risks*”. Such national measures must be communicated to the Commission to then be shared and discussed with the other EU Member States in the Standing Committee on Plants, Animals, Food and Feed (section Phytopharmaceuticals – Pesticides Residues). In order to provide guidance to EU Member States, the Commission had asked the European Food Safety Authority (hereinafter, EFSA) to conduct a preliminary analysis of existing EU MRLs compared to [Codex Alimentarius](#) MRLs (hereinafter, CXLs) for the most relevant crops, with a view to keeping the same high level of protection for consumers. In the meeting on 11 March 2022, the EFSA presented the outcome explaining the calculations conducted on whether CXLs would be safe for food or, in some cases, for use as “*feed only*”. The Commission noted that national temporary MRLs are meant to help address acute shortages in the EU Member States setting them and, therefore, “*it would not be expected that the products concerned would be traded with other Member States*”. Furthermore, national measures must be limited in time according to the specific situation in the respective EU Member State and must be controlled.

### Spain temporarily relaxed requirements for maize imports from Argentina and Brazil

In 2021, Ukraine, the world's fourth-largest maize exporter, supplied Spain with about 1.9 million metric tonnes of the cereal. These imports are crucial for the Spanish livestock sector,

one of the most important in the EU. In Spain, which is reportedly expecting maize shipments from the US, Argentina and Brazil, the Government is temporarily allowing imports with higher pesticide residues to compensate for the loss of Ukraine's supplies. On 14 March 2022, Spain's Ministry of Agriculture, Fisheries and Food [published a resolution](#) by which specific phytosanitary requirements for the import of maize from Argentina and Brazil are temporarily relaxed, to facilitate the import of raw materials for animal feed that replace the imports of maize from Ukraine. Previously, the Ministry met with the Spanish *Association of Foreign Trade in Cereals and Similar Products* (Aecec, in its Spanish acronym). While maize from the US does not appear to present any problems, and no exceptional measures are necessary, on the basis of the information provided by Aecec and, after carrying out the corresponding risk analysis in relation to ten plant protection products, it was concluded that six of them do not present any problems in light of the current legislation. For the remaining four, Spain's Ministry of Agriculture, Fisheries and Food has agreed to establish higher MRLs in application of Article 18 of *Regulation (EC) 396/2005*.

The Resolution will be applied temporarily to maize originating in Brazil and Argentina and to certain pesticide residues. According to the Ministry, this measure solves the technical problems for the importing sector, which can now import maize for animal feed from the main producing countries. At the same time, the measure offers certainty and flexibility, without jeopardising food safety and, with it, guarantees the supplies for the livestock sector in Spain.

### **More EU imports of genetically modified animal feed from the US and South America**

Pesticide residues are not the only issue with imported maize. According to reports, the EU is expected to import increased amounts of GM animal feed from the US and South America after Russia's invasion cut off maize shipments from Ukraine. Reportedly, some farmers in central Europe and Denmark are starting to run out of non-GM feed. Maize is mainly used as animal feed. Ukraine's non-GM maize accounts for about half the EU's imports, according to the Commission. However, currently, over 90% of US maize is produced using GM varieties, according to the [USDA](#), with similar levels in [Brazil](#), according to the *International Service for the Acquisition of Agri-biotech Applications* (ISAAA).

The EU has a legal framework in place that concerns the authorisation, traceability and labelling of GMOs. In relevant part, this framework is found in [Regulation \(EC\) No. 1829/2003 of the European Parliament and of the Council on genetically modified food and feed](#), [Regulation \(EC\) No 1830/2003 of the European Parliament and of the Council concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms](#), [Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms](#) and [Directive \(EU\) 2015/412 of the European Parliament and of the Council amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of genetically modified organisms \(GMOs\) in their territory](#). There is no legal impediment to import increased amounts of GM crops, as long as the GM crops are authorised in the EU and registered. The [EU Register of GM food and feed](#) currently lists about 40 registered GM maize varieties.

### **The matter of labelling of GM food and feed and “GMO-free” claims**

As regards the labelling of GM food and feed, [Regulation \(EC\) No 1829/2003](#) and [Regulation \(EC\) No 1830/2003](#) establish detailed requirements. In particular, food containing genetically modified materials at a level above a threshold of 0.9% must be labelled as such. However, EU law does not require the indication on labels that meat or dairy products was/were produced from animals fed with GM crops. EU legislation does also not establish requirements, nor does it prohibit the use of “GM-free” labels signalling that food do not contain GM crops, or were produced not using GMOs. Such labels are, however, being regulated in several EU Member States because consumer demand has increased for meat and dairy products from animals fed with non-GM varieties. For instance, on 30 January 2012, France adopted [Decree no. 2012-128](#) concerning the voluntary labelling of foodstuffs originating from production chains



qualified as “*GMO-free*”. The rules contained therein implement the provision in the French Environmental Code recognising the freedom to produce and consume products either with or without GMOs. In relevant part, ingredients from livestock may not be labelled “*GMO-free*” if the livestock has been fed with GM feed. In Germany, Article 3a(1) of the [Law](#) implementing regulations of the European Union in the field of genetic engineering and on the labelling of food produced without the use of genetic engineering techniques sets out that a food may be placed on the market or advertised with a sign, which points to the manufacture of the food without the use of genetic engineering methods, unless certain requirements are adhered to. Article 3a(1) also provides that only a “*GM-free*” claim may be used. In the case of a food or a food ingredient of animal origin, the animal may not have been fed with feed labelled as GMOs for feed use, feed containing or consisting of GMOs, feed produced from GMOs.

With increasing imports of GM maize, it may become increasingly difficult, for producers that intend to label their products as “*GM-free*”, to ensure that the livestock has indeed been fed with non-GM feed. Maize shipments from the US and South America are most likely GM maize and, for certain products, cannot replace supplies of non-GM maize previously sourced from Ukraine. This will most likely lead to shortages in “*GM-free*” products, but not to shortages of meat and dairy products in general.

### **A change of EU food safety policy?**

After Russia’s invasion cut off maize shipments from Ukraine, maize imports for feed originating in South America and the US with residues of certain pesticides above the MRLs established in EU law will temporarily be allowed in the EU. This temporary measure, foreseen in EU law, guarantees the supplies for the EU livestock sector. Furthermore, the EU is expected to import increased amounts of EU-approved GM maize from the US and South America. The solution to current supply issues, if applied temporarily, appears to be rather pragmatic and not yet a change to EU food safety policy on pesticides and GMOs. It remains to be seen, however, whether this pragmatic solution may weaken future stands by the EU to justify its restrictive policies on GMOs on the basis of public morals and ethical choices.

## **Recently adopted EU legislation**

### **Trade Law**

- [Commission Implementing Regulation \(EU\) 2022/663 of 21 April 2022 amending Implementing Regulation \(EU\) 2020/761 as regards the volume of the tariff rate quota for high-quality beef from Paraguay](#)

### **Trade Remedies**

- [Commission Implementing Regulation \(EU\) 2022/674 of 22 April 2022 correcting Implementing Regulation \(EU\) 2022/95 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People’s Republic of China, as extended to imports of certain tube and pipe fittings, of iron or steel consigned from Taiwan, Indonesia, Sri Lanka and the Philippines, whether declared as originating in these countries or not following an expiry review pursuant to Article 11\(2\) of Regulation \(EU\) 2016/1036 of the European Parliament and of the Council](#)
- [Commission Implementing Regulation \(EU\) 2022/664 of 21 April 2022 amending Implementing Regulation \(EU\) 2019/159 imposing a definitive safeguard measure against imports of certain steel products](#)

## Food Law

- *Commission Delegated Regulation (EU) 2022/671 of 4 February 2022 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards specific rules on official controls performed by the competent authorities on animals, products of animal origin and germinal products, follow-up action to be taken by the competent authority in case of non-compliance with identification and registration rules for bovine, ovine and caprine animals or of non-compliance during transit through the Union of certain bovine animals, and repealing Commission Regulation (EC) No 494/98 ( 1 )*
- *Commission Implementing Regulation (EU) 2022/672 of 22 April 2022 amending Implementing Regulation (EU) 2017/2470 as regards the specifications of the novel food trans-resveratrol (from microbial source) ( 1 )*

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