



Course III

How to create an innovative business in the agri-food sector? Legal aspects

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I.INTRODUCTION: a) Need for action in the agri-food sector

- People pay increasing attention to environmental, health, social and ethical issues. People want food that is fresh, less processed and sustainably sourced. This requires a strategy aiming to support farmers, fishers and other operators in the food chain to adopt new sustainable practices.
- Food systems remain one of the key drivers of climate change and environmental degradation. There is an urgent need to reduce dependency on pesticides and antimicrobials, reduce excess fertilisation, increase organic farming, improve animal welfare, and reverse biodiversity loss. This need is reflected in the United Nations' Sustainable Development Goals (SDGs) [and in the European Green Deal of the European Union]
- At global level, it is estimated that food and agriculture systems in line with the SDGs would deliver nutritious and affordable food for a growing world population, help restore vital ecosystems and could create new economic value of over EUR 1.8 trillion by 2030. Source: Business & Sustainable Development Commission (2017), Better business, better world].
- The transition to sustainable food systems is a huge economic opportunity and create additional opportunities for new businesses.



b) Towards a new green business model

- **General principle:** All actors of the food chain must play their part in achieving the sustainability of food chain. Farmers, fishers and aquaculture producers need to transform their production methods more quickly, and make the best use of nature-based, technological, digital, and space-based solutions to deliver better climate and environmental results, increase climate resilience and reduce and optimise the use of inputs (e.g. pesticides, fertilisers).
- **Examples of the new green business model:**
- **1) Carbon sequestration by farmers and foresters.** Farming practices that remove CO₂ from the atmosphere contribute to the climate neutrality objective and should be rewarded. Robust certification rules for carbon removals in agriculture and forestry are the first step to enable payments to farmers and foresters for the carbon sequestration they provide. Private companies could be interested in purchasing such certificates to support climate action, thus providing an additional incentive (See Communication from the Commission– A new Circular Economy Action Plan For a cleaner and more competitive Europe, COM/2020/98 final).



Towards a new green business model II

- 2) **Advanced bio-refineries.** The circular bio-based economy is still a largely untapped potential for farmers and their cooperatives. For example, advanced bio-refineries that produce bio-fertilisers, protein feed, bioenergy, and bio-chemicals offer opportunities for the transition to a climate-neutral European economy and the creation of new jobs in primary production.
- 3) **Biogas production.** Farmers should grasp opportunities to reduce methane emissions from livestock by developing the production of renewable energy and investing in anaerobic digesters for biogas production from agriculture waste and residues, such as manure. Farms also have the potential to produce biogas from other sources of waste and residues, such as from the food and beverage industry, sewage, wastewater and municipal waste.
- 4) **Solar panels.** Farm houses and barns are often perfect for placing solar panels and such investments should be prioritised in the agri-food Strategic Plans.
- 5) **Bioeconomy.** The deployment of a circular and sustainable EU Bioeconomy provides business opportunities, for instance linked to making **use of food waste.** **Food packaging** plays a key role in the sustainability of food systems (revision of the food contact materials to improve food safety and public health, among others by reducing the use of hazardous chemicals or by supporting the use of innovative and sustainable packaging solutions).



Towards a new green business model III

- **6) Practices that reduce the use of pesticides.** The use of chemical pesticides in agriculture contributes to soil, water and air pollution, biodiversity loss and can harm non-target plants, insects, birds, mammals and amphibians. States (and people) need to take a number of steps:
 - (i) promote greater use of safe alternative ways of protecting harvests from pests and diseases,
 - ii) use of alternative control techniques, such as crop rotation and mechanical weeding,
 - iii) placing on the market of pesticides containing biological active substances,
 - iv) reinforce the environmental risk assessment of pesticides
 - v) reduce the length of the pesticide authorisation process by States,
 - vi) applying balanced fertilisation and sustainable nutrient management,
 - vii) managing nitrogen and phosphorus better throughout their lifecycle,
 - viii) application of precise fertilisation techniques and sustainable agricultural practices, notably in hotspot areas of intensive livestock farming,
 - ix) recycling of organic waste into renewable fertilisers.



Towards a green business model IV

- **7) Animal production.** To help reduce the environmental and climate impact of animal production, avoid carbon leakage through imports and to support the ongoing transition towards more sustainable livestock farming, States should facilitate the placing on the market of sustainable and innovative feed additives. It is necessary to reduce the dependency on critical feed materials (e.g. soya grown on deforested land) by fostering grown plant proteins as well as alternative feed materials such as insects, marine feed stocks (e.g. algae) and by-products from the bio-economy (e.g. fish waste). [See Communication from the Commission— A sustainable Bioeconomy for Europe: Strengthening the connection between economy, society and the environment, COM/2018/673 final].
- **8) Antimicrobial resistance (AMR)** linked to the excessive and inappropriate use of antimicrobials in animal and human healthcare leads to a big number of human deaths and considerable healthcare costs. States should therefore take action to reduce overall sales of antimicrobials for farmed animals and in aquaculture.
- **9) Organic farming needs to be promoted.** It has a positive impact on biodiversity, it creates jobs and attracts young farmers. Consumers recognise its value. States should stimulate both supply and demand for organic products. It will ensure consumer trust and boost demand through promotion campaigns and green public procurement.



Towards a green business model V

- **10) Protecting the plant health.** The sustainability challenge calls for measures to protect plants better from emerging pests and diseases, and for innovation.
- New innovative techniques, including biotechnology and the development of bio-based products, may play a role in increasing sustainability, provided they are safe for consumers and the environment while bringing benefits for society as a whole.
- They can also accelerate the process of reducing dependency on pesticides. One look at the potential of new genomic techniques to improve sustainability along the food supply chain. Sustainable food systems also rely on seed security and diversity.
- Farmers need to have access to a range of quality seeds for plant varieties adapted to the pressures of climate change.
- States should take measures to facilitate the registration of seed varieties, including for organic farming, and to ensure easier market access for traditional and locally-adapted varieties.



Towards a green business model VI

- **General conclusion:**
 - **I.** States should help farmers to improve their environmental and climate performance through:
 - a) a more results-oriented model,
 - b) better use of data and analysis,
 - c) improved mandatory environmental standards,
 - d) new voluntary measures and
 - e) an increased focus on investments into green and digital technologies and practices.
 - **II.** The legal framework should support the green business model



c) Legal framework

- The proper function of the markets need common definitions and general principles and requirements for sustainable food systems and foods. Combined with certification and labelling on the sustainability performance of food products, the framework will allow operators to benefit from sustainable practices and progressively raise sustainability.
- Rules are needed to facilitate the placing on the market of sustainable and innovative feed additives and reduce the dependency on critical feed materials (e.g. soya grown on deforested land) by fostering plant proteins as well as alternative feed materials such as insects, marine feed stocks (e.g. algae) and by-products from the bio-economy (e.g. fish waste).
- Rules are needed to certify carbon removals based on robust and transparent carbon accounting and to monitor and verify the authenticity of carbon removals.
- Rules are needed to impose the reduction of sales of antimicrobials for farmed animals and in aquaculture and promote for proper veterinary medicinal products and medicated feed.
- Rules are needed to reinforce vigilance on plant imports and surveillance on States' territory in order to certify that imported plants are safe for consumers and the environment while bringing benefits for society as a whole.

Legal framework II

- Rules are needed to promote a circular and sustainable Bioeconomy, including use of food waste, new methods of food packaging, solutions using environmentally-friendly, re-usable and recyclable materials, as well as new legislative on re-use in food services to substitute single-use food packaging and cutlery by re-usable products.
- Rules are needed to improve the corporate governance framework, including a requirement for the food industry to integrate sustainability into corporate strategies.
- Rules are needed to setting minimum mandatory criteria for sustainable food procurement. This will help cities, regions and public authorities to play their part by sourcing sustainable food for schools, hospitals and public institutions and it will also boost sustainable farming systems, such as organic farming. The Commission will lead by example and reinforce sustainability standards in the catering contract for its canteens.
- Rules are needed to integrate food loss and waste prevention in other policies. Misunderstanding and misuse of date marking ('best before' dates) lead to food waste. The establishment of a Platform on Food Losses and Food Waste [with recommendations] will help show the way forward for all actors, for instance investigate food losses at the production stage and explore ways of preventing them.



Legal framework III

- Competition rules should be clarified to support primary producers in the transition, allowing collective initiatives that promote sustainability in supply chains and helping farmers and fishers to strengthen their position in the supply chain and to capture a fair share of the added value of sustainable production [by encouraging the possibilities for cooperation]
- Rules are needed to improve agricultural rules that strengthen the position of farmers (e.g. producers of products with geographical indications), their cooperatives and producer organisations in the food supply chain, and, where appropriate, include specific sustainability criteria.
- Rules are needed not to allow Unfair Trading Practices [see Directive (EU) No 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (OJ L 111, 25.4.2019, p. 59)].
- Rules are needed to empower consumers to make informed, healthy and sustainable food choices, by imposing harmonised mandatory front-of-pack nutrition labelling and provenance indications. One should also explore new ways to provide information to consumers through other means including digital, to improve the accessibility of food information



Legal framework IV

- Tax incentives should also drive the transition to a sustainable food system and encourage consumers to choose sustainable and healthy diets. Rules are needed to use VAT rates, to make more targeted use of rates, for instance to support organic fruit and vegetables. Tax systems should also aim to ensure that the price of different foods reflects their real costs in terms of use of finite natural resources, pollution, **GHG emissions** and other environmental externalities.
- New rules are needed to facilitate combating food fraud along the food supply chain. Food fraud jeopardises the sustainability of food systems. It deceives consumers and prevents them from making informed choices. It undermines food safety, fair commercial practices and the resilience of food markets. A zero tolerance policy with effective deterrents is crucial in this regard. Authorities should scale up their fight against food fraud to achieve a level playing field for operators and strengthen the powers of control. It is necessary to propose strict dissuasive measures, better import controls and examine the possibility to strengthen coordination and investigative capacities of the competent authorities.



Legal framework V

- It is necessary to elaborate a **Code of conduct** for responsible business and marketing practice accompanied with a monitoring framework. The Code will be developed with all relevant stakeholders. The competent authorities should seek commitments from food companies and organisations to take concrete actions on health and sustainability, focussing in particular on: reformulating food products in line with guidelines for healthy, sustainable diets; reducing their environmental footprint and energy consumption by becoming more energy efficient; adapting marketing and advertising strategies taking into account the needs of the most vulnerable; ensuring that food price campaigns do not undermine citizens' perception of the value of food. For example, marketing campaigns advertising meat at very low prices must be avoided. If progress is insufficient, these commitments must be obligatory.
- Rules are needed to facilitate the shift to healthier diets and stimulate product reformulation, including by setting up nutrient profiles to restrict the promotion (via nutrition or health claims) of foods high in fat, sugars and salt.

Questions and answers [Introduction]

1. Why today more than ever there is a need to act in the field of agri-food? Food systems remain one of the key drivers of climate change and environmental degradation. There is an urgent need to reduce dependency on pesticides and antimicrobials, reduce excess fertilisation, increase organic farming, improve animal welfare, and reverse biodiversity loss. This need is reflected in the United Nations' Sustainable Development Goals (SDGs)

2. What is green business model? The term covers new and more environmental friendly ways to conduct business. A green business model involves among others: recycling of products and materials, substitution of toxic substances, energy-efficient practices, renewable energy sources, generally a solid commitment to sustainability in its business practices.

3. What are the most important legal dimensions of the green business model? 1) adopt common definitions and general principles and requirements for sustainable food systems and foods, 2) certify carbon removals, 3) promote a circular and sustainable Bioeconomy, including the use of food waste, new methods of food packaging, 4) provide tax incentives which should encourage consumers to choose sustainable and healthy diets, 5) improve the corporate governance framework, 6) integrate food loss and waste prevention in other policies.



II. Trade and international agreements

- **International trade** is based on the principle of the comparative advantage.
- **Definition of the comparative advantage:** a country will specialize in the production of a good in which it has a comparative advantage [David Ricardo, 1817]. Paul Krugman: international trade is about “mutually beneficial exchange”.
- **International economic law** [I.E.L.] is the law of international economic relations among States. It is rooted in general public international law. It deals with those international economic relations in which the State is the main subject and actor.
- **Public International law** is based on the principle of sovereignty of each State over its territory and the exclusion of interference in other countries’ domestic affairs. While the States are sovereign, they are also equal. Sovereignty equality owes a lot to the two world wars and the postcolonial world order.
- The State is the primary subject and actor of international relations, containing a vast array of specialized topics, including trade, investment, finance, development and aid, human rights, labor, environment and tax.



a) The concept of sovereignty

- **Charter of the United Nations. Chapter I — Purposes and Principles. Article 2:** “The Organization and its Members, [...], shall act in accordance with the following Principles.
- 1. The Organization is based on the principle of the sovereign equality of all its Members.
- 2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
- 3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
- 4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
- 5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.



The principle of economic sovereignty

- “General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources“:
- 1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.
- 2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.
- 3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State.



The principle of economic sovereignty II

4. Nationalizations shall be based on grounds of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation. Where the question of compensation gives rise to a controversy, upon agreement by sovereign States and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication.

5. International co-operation for the economic development of developing countries, whether in the form of public or private capital investments, exchange of goods and services, technical assistance, or exchange of scientific information, shall be such as to further their independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources.

6. Foreign investment agreements freely entered into by or between sovereign States shall be observed in good faith; States and international organizations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the Charter and the principles set forth in the present resolution.



b) World Trade Organization [WTO]

The General Agreement on Tariffs and Trade (GATT) was created in 1947 in the expectation that it would soon be replaced by a specialized agency of the United Nations (UN) to be called the International Trade Organization (ITO).

Although the ITO never materialized, the GATT proved remarkably successful in liberalizing world trade over the next five decades. By the late 1980s there were calls for a stronger multilateral organization to monitor trade and resolve trade disputes.

WTO is the successor to the GATT. It began operations on January 1, 1995.

Basic principles: 1) the principle of non-discrimination, which is a key principle found in almost all branches of I.E.L., 2) the principle of non-discrimination includes principles first the principle of the most favoured national treatment [M.F.N.T] and the principle of national treatment. M.F.N.T. is the obligation to extend any advantage granted by a WTO member. National treatment seeks to ensure that WTO members do not treat imported products less favourably than domestic products once the products enter into internal commerce.



Exceptions to national treatment rule

Although national treatment is a basic principle under the GATT, the GATT provides for certain exceptions:

- 1) Government Procurement.** GATT Article III:8(a) permits governments to purchase domestic products preferentially, making government procurement one exception to the principle.
- 2) Subsidies to Domestic Producers.** GATT Article III:8(b) allows for the payment of subsidies exclusively to domestic producers as an exception to the national treatment rule. However, because subsidies may have a negative effect on trade, the Agreement on Subsidies and Countervailing Measures imposes strict disciplines on their use.
- 3) Enabling clause.** It permits developed countries to discriminate between different categories of trading partners (in particular, between developed, developing and least developed countries).
- 4) Generalized System of Preferences (GSP).** Paragraph 2(c) permits developing countries to enter into preferential trade agreements which do not meet the strict criteria laid out in GATT Article XXIV for regional free-trade agreements. It allows developing countries to enter into agreements which may be non-reciprocal, or cover a very limited range of products.



Resolution of trade disputes

The GATT provided an avenue for resolving trade disputes, a role that was strengthened substantially under the WTO. Members are committed not to take unilateral action against other members. Instead, they are expected to seek recourse through the WTO's dispute-settlement system and to abide by its rules and findings. The procedures for dispute resolution under the GATT have been automated and greatly streamlined, and the timetable has been tightened.

Dispute resolution begins with bilateral consultations through the mediation, or "good offices," of the director-general. If this fails, an independent panel is created to hear the dispute. The panel submits a private draft report to the parties for comment, after which it may revise the report before releasing it to the full WTO membership. Unlike the IMF and the World Bank, both of which use weighted voting, each WTO member has only one vote. As in the earlier GATT system, however, most decisions are made by consensus. Unless one or both of the parties files a notice of appeal or the WTO members reject the report, it is automatically adopted and legally binding after 60 days. The process is supposed to be completed within nine months, and, if an appeal is lodged, the WTO Appellate Body hears and rules on any claim of legal error within 60 days. Appellate rulings are automatically adopted unless a consensus exists among members against doing so.



Assessment of the WTO agreement

GENERAL ASSESSMENT

The pace of international economic integration via the GATT and WTO rounds of multilateral trade negotiations has been slower and less comprehensive than some members would prefer. Some have suggested that there should be additional integration among subgroups of (often neighbouring) member economies—e.g., those party to the European Union, the North American Free Trade Agreement (superseded by the United States-Mexico-Canada Agreement, signed in 2018) and the Asia-Pacific Economic Cooperation—for political, military, or other reasons.

Beginning in the late 1990s, the WTO was the target of fierce criticism. Opponents of economic globalization (antiglobalization), and in particular those opposed to the growing power of multinational corporations, argued that the WTO infringes upon national sovereignty and promotes the interests of large corporations at the expense of smaller local firms struggling to cope with imported competition. Some WTO members, especially developing countries, resisted attempts to adopt rules that would allow for sanctions against countries that failed to meet strict environmental and labour standards, arguing that they would amount to veiled protectionism.



International trade: advantages and disadvantages

- Advantages: 1) David Ricardo: a country will specialize in the production of a good in which it has a comparative advantage. 2) Paul Krugman: international trade is about “mutually beneficial exchange”. 3) World Bank (2020): trade is an engine of growth that creates jobs, reduces poverty and increases economic opportunity. Over one billion people have moved out of poverty because of economic growth underpinned by open trade since 1990.
- Disadvantages: 1) inequalities produced by trade liberalization (negative aspect of globalization (Thomas Piketty, Capital and Ideology, 2020). 2) Joseph Stiglitz: 1) The governance is unfair, with the USA having the real power in the IMF. 2) Multinational corporations and international financial institutions are the real decision-makers. 3) A number of super multinational corporations avoid tax.
- The most pressing problems of our time: 1) whether and to what extent trade and investment agreements should include provisions on labor conditions and wages, the environment, sustainability, or taxation of multinational firms, 2) how can human rights be placed at the core of trade and investment agreements.

European Commission's assessment

COM(2021) 66 final. [18.2.2021]. Trade Policy Review - An Open, Sustainable and Assertive Trade Policy [Annex, Reforming the WTO: Towards a sustainable and effective multilateral trading-system]

Why does the WTO matter? Since the foundation of the multilateral trading system in 1947, world trade has expanded 300-fold, and today makes up more than 60% of global GDP, supporting jobs, growth and investment around the world. This is partly thanks to successive reductions in tariffs negotiated through the multilateral system: in 1947, applied tariffs ranged between 20% and 30%, today, the world's applied tariffs stand at an average of around 9%. But this is also thanks to the stability the system provides.

Why is the WTO in crisis? Today's crisis affects all three functions of the WTO: 1) negotiations have failed to modernise the rules (e.g. digital trade or sustainability) because a) it is difficult to reach consensus among 164 members, and b) the two thirds of the membership [developing countries] claim special and differential treatment, 2) the dispute settlement system was effectively paralysed at the end of 2019, due to the blockage of appointments of Appellate Body members by the United States, 3) the monitoring of trade policies is ineffective (non- transparency about members' trade legislation and practice-topics such as environmental degradation, climate change or decent work are considered taboo).



The urgent need for reform

[The failure of progress in WTO negotiations shifted the attention to bilateral trade agreements].

1) The objective: addressing the most pressing problems members face: economic recovery and development, free from competitive distortions, as well as environmental and social sustainability as part of the green transition of economies, and in line with the objectives of the UN Sustainable Development Goals (the ‘SDGs’), to which all WTO members have committed.

2) Confidence-building measures. Concluding the fisheries subsidies negotiations would be an important step towards solidifying the WTO’s contribution to sustainability. This agreement is of importance not only as the first multilateral agreement in years, but also as the first agreement with implementation of an SDG as its core .

3) Trade and environment issues: The EU will support in international discussions on trade and environment issues an interpretation of relevant WTO provisions that recognise the right of Members to provide effective responses to global environmental challenges, notably climate change and the protection of biodiversity (information exchange and analysis as a first step to develop disciplines on fossil fuel subsidies; greening aid for trade; and strengthening the WTO’s institutional framework dealing with trade and environment issues).



The urgent need for reform II

4) Further integrate the social dimension of globalisation into the work of the WTO. The WTO also has a role to play in helping to implement the SDGs on decent work and gender equality,. It should foster analysis and exchange of experiences as to how trade policies can contribute to social development. This action could be supported through further and more active cooperation between the WTO and the International Labour Organization.

5) The need for a forward-looking approach to special and differential treatment (SDT). One of the founding objectives of the WTO is to ensure that developing countries, and especially the least developed among them, secure a share of the benefits of international trade commensurate with the needs of their economic development. Restoring the credibility of the WTO as a negotiating forum also requires a new approach to SDT. Such an approach should combine a more targeted focus on how to support integration into the trading system, **along with greater differentiation between developing countries, based on identified needs.** The EU would strongly support SDT provisions that effectively respond to the capacity constraints of the vast majority of developing countries. Due to its weight in the system, China should lead by example and not claim SDT in any ongoing negotiation.

6) Restoring a binding WTO dispute settlement system with a reformed Appellate Body.



The urgent need for reform III

7) **Towards a more effective negotiating function.** The priority should be to modernise the rules of the WTO on e-commerce, investment facilitation, services domestic regulation and on the role of the state in the economy, including on subsidies. State-owned enterprises (SOEs) are, in a number of countries, an instrument through which the state decisively influences the economy, sometimes with market-distortive effects. However, the importance of SOEs is not yet matched with sufficient disciplines to capture any market-distorting behaviour. New international SOE rules should focus on the behaviour of SOEs in their commercial activities, in line with the disciplines already agreed in several free trade and investment agreements.

8) **Addressing imbalances between members' market access commitments.** Market access commitments have not been updated since the conclusion of the Uruguay Round and are increasingly disconnected from the economic realities of the 21st century. The current structure of WTO market access commitments in goods and services does not correspond to the actual level of openness of many countries and fails to reflect the significant changes in weight of certain major trading nations in the world economy (**e.g. China**). The primary focus of any WTO reform effort should be to modernise rules on competitive neutrality: subsidies, SOEs, forced technology transfers and domestic regulation.



The urgent need for reform IV

9) The contribution of agriculture. Agriculture remains an important – even core – interest for much of the WTO membership and the lack of progress risks to negatively affect the wider WTO reform agenda. The EU has reformed its agricultural policy over the last 30 years, moving away from trade-distorting to non-trade-distorting support. Other WTO members have yet to undertake similar reforms. Reviving negotiations on agricultural market access, whether in relation to tariff reductions or other elements, does not seem likely for the time being. These form part of a wider set of market access negotiations including industrial goods, where the conditions for balance do not seem to be present. The EU will focus on export restrictions and transparency improvements. Finally, there is a need to mainstream environmental sustainability aspects in the agricultural negotiations in line with the necessity of the green transition of economies.

10) Reinforcing the monitoring and deliberative functions of the WTO. Work in the regular WTO councils and committees plays an essential role in safeguarding the rules-based multilateral trading system by, inter alia, conducting day-to-day technical business, monitoring members' trade policies, addressing trade concerns and giving members a place to deliberate on trade developments. Unfortunately, a number of ineffective procedures, gaps in compliance with transparency obligations and widespread lack of trust often make effective engagement difficult. Together with the US, Japan and other members, the EU made a proposal on improving transparency and compliance with notification obligations in the area of trade in goods, especially in specific areas, **such as agriculture.**



New WTO's agreements

- On 6th July 2023, EU and other WTO Members reach landmark deal to facilitate investment and support development (Agreement on Investment Facilitation for Development-IFD).
- The IFD Agreement responds to concrete day-to-day challenges to new investments, particularly in developing countries, by making rules transparent, streamlining investment procedures, and improving the relationship between investors and administrations. The new agreement will boost development in poorer countries
- Following on from the Joint Statement Initiative on Domestic Regulation in Services in 2021 and the multilateral Agreement on Fisheries Subsidies in 2022, the IFD Agreement demonstrates again that the WTO is being made fit for purpose to tackle the economic and broader sustainable development challenges of the 21st Century.



c) Trade-Related aspects of Intellectual property Rights [TRIPS]

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international legal agreement between all the member nations of the World Trade Organization (WTO).

TRIPS is administered by the WTO.

The Doha declaration is a WTO statement that clarifies the scope of TRIPS, stating for example that TRIPS can and should be interpreted in light of the goal "to promote access to medicines for all.

"Unlike other agreements on intellectual property, TRIPS has a powerful enforcement mechanism. States can be disciplined through the WTO's dispute settlement mechanism.



The protection

TRIPS requires member states to provide strong protection for intellectual property rights. For example, under TRIPS: 1) Copyright terms must extend at least 50 years, unless based on the life of the author. (Art. 12 and 14), 2) Copyright must be granted automatically, and not based upon any "formality", such as registrations, as specified in the Berne Convention. (Art. 9), 3) Computer programs must be regarded as "literary works" under copyright law and receive the same terms of protection. 4) Patents must be granted for "inventions" in all "fields of technology" provided they meet all other patentability requirements (although exceptions for certain public interests are allowed (Art. 27.2 and 27.3)[9] and must be enforceable for at least 20 years (Art 33). 5) Exceptions to exclusive rights must be limited, provided that a normal exploitation of the work (Art. 13) and normal exploitation of the patent (Art 30) is not in conflict. 6) No unreasonable prejudice to the legitimate interests of the right holders of computer programs and patents is allowed. 7) Legitimate interests of third parties have to be taken into account by patent rights (Art 30). 8) In each state, intellectual property laws may not offer any benefits to local citizens which are not available to citizens of other TRIPS signatories under the principle of national treatment (with certain limited exceptions, Art. 3 and 5). 9) TRIPS also has a most favored nation clause.



Software and databases

The TRIPS Agreement incorporates by reference the provisions a) on copyright from the Berne Convention for the Protection of Literary and Artistic Works (Art 9), and b) the substantive provisions of the Paris Convention for the Protection of Industrial Property (Art 2.1). The TRIPS Agreement specifically mentions that software and databases are protected by copyright, subject to originality requirement (Art 10).

Implementation in developing countries:

The obligations under TRIPS apply equally to all member states; however, developing countries were allowed extra time to implement the applicable changes to their national laws, according to their level of development. It has therefore been argued that the TRIPS standard of requiring all countries to create strict intellectual property systems will be detrimental to poorer countries' development. It has been argued that it is, prima facie, in the strategic interest of most if not all underdeveloped nations to use the flexibility available in TRIPS to legislate the weakest IP laws possible.



Assessment of the TRIPS agreement

A 2005 report found that many developing countries have not incorporated TRIPS flexibilities (compulsory licensing, parallel importation, limits on data protection, use of broad research and other exceptions to patentability, etc.) into their legislation to the extent authorized under Doha. This is likely caused by the lack of legal and technical expertise needed to draft legislation that implements flexibilities, which has often led to developing countries directly copying developed country IP legislation or relying on technical assistance from the World Intellectual Property Organization (WIPO).

In addition, many nations have engaged in bilateral agreements to adopt a higher standard of protection. These collection of standards, known as TRIPS+ or TRIPS-Plus, can take many forms: 1) The creation of anti-circumvention laws to protect Digital Rights Management systems. This was achieved through the 1996 World Intellectual Property Organization Copyright Treaty (WIPO Treaty) and the WIPO Performances and Phonograms Treaty. 2) More stringent restrictions on compulsory licenses for patents. 3) More aggressive patent enforcement. This effort has been observed more broadly in proposals for WIPO and European Union rules on intellectual property enforcement. The 2001 EU Copyright Directive was to implement the 1996 WIPO Copyright Treaty.



Other agreements on intellectual property

There are many others international agreements and EU instruments that shape and direct Intellectual property. However, very few of them have an effect beyond the particular country jurisdiction in which they are granted. This means that IP producers must register their rights in each jurisdiction where they seek protection. This cumbersome process is eased in some cases by international agreements that permit one application to be lodged and then considered for a number of specified countries. For example, the Patent Cooperation Treaty (1970) provides such a mechanism for patents, the Madrid Agreement Concerning the International Registration of Marks (1891) and the Madrid Protocol (1989) offer an equivalent system for trade marks and the Hague Agreement Concerning the Deposit of Industrial Designs (1925) allows for the deposit of a single design application which will be recognized throughout all countries that are signatories to the agreement. In each case, however, it is national rights which are obtained ultimately, and infringement and enforcement procedures can only be invoked in the domestic courts of individual states.

In the context of copyright, signatory countries to the Berne Convention for the Protection of Literary and Artistic Works (1886) and the Universal Copyrights Convention (1952) guarantee mutual recognition of copyright to nationals of fellow signatory states.



What is Intellectual Property?

DEFINITION. Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. IP is protected in law (patents, copyright and trademarks). IP enables people to earn financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.



An example: Geographical indication[GI]

- **A geographical indication (GI)** is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.
- **What rights does a geographical indication provide?** A geographical indication right enables those who have the right to use the indication to prevent its use by a third party whose product does not conform to the applicable standards.
- **What is the difference between a geographical indication and a trademark?** Geographical indications (GIs) identify a good as originating from a particular place. By contrast, a trademark identifies a good or service as originating from a particular company.



Questions and answers [II]

1. How is the principle of economic sovereignty of each state protected by joining the World Trade Organization?

Decisions are taken by consensus and the principle of non-discrimination accepts exceptions in favor of developing countries

2. What is the WTO's contribution to trade?

Since the foundation of the multilateral trading system in 1947, world trade has expanded 300-fold, and today makes up more than 60% of global GDP, supporting jobs, growth and investment around the world.

3. What is the criticism against the World Trade Organization?

1) Creation of inequalities produced by trade liberalization. 2) Multinational corporations and international financial institutions are the real decision-makers. 3) Imbalances between members' market access commitments, 4) There is not a competitive neutrality (subsidies, forced technology, domestic regulation. Further. 5) Not integration of the social dimension of globalisation into the work of the WTO.

4. What is the contribution of TRIPS to the protection of intellectual property rights?

Unlike other agreements on intellectual property, TRIPS has a powerful enforcement mechanism. States can be disciplined through the WTO's dispute settlement mechanism.



III. European Union's external action

Article 21 of the Treaty of the EU: The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the same principles. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.



a) Supranational policies of EU

PART FIVE of the TFEU: The EU's external action

Article 206. [COMMON COMMERCIAL POLICY]. By establishing a customs union in accordance with Articles 28 to 32, the Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.

Article 208. [DEVELOPMENT COOPERATION]. EU's development cooperation policy has as its primary objective the reduction and, in the long term, the eradication of poverty.

Article 212.[FINANCIAL ASSISTANCE]. The EU shall carry out economic, financial and technical cooperation measures, including financial assistance.

Article 214. [Humanitarian aid]. The EU shall provide ad hoc assistance and relief and protection for people in third countries who are victims of natural or man-made disasters.

Article 215.[Restrictive measures]. The EU can interrupt or reduce economic and financial relations with one third country. In the framework of a such decision, the Council may adopt restrictive measures against natural or legal persons and groups or non-State entities



International agreements and the principle of supremacy

Article 216. 1. The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope. **2. Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.**

Article 217. The Union may conclude with one or more third countries or international organisations agreements establishing **an association** involving reciprocal rights and obligations, common action and special procedure.



b) European Neighbourhood Policy

The European Neighbourhood Policy (ENP) governs the EU's relations with 16 of the EU's closest Eastern and Southern Neighbours. To the South: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia. To the East: Armenia, Azerbaijan, Belarus, Georgia, Moldova, Ukraine.

The ENP was launched in 2003 and developed throughout 2004, with the objective of avoiding the emergence of new dividing lines between the enlarged EU and its neighbours and instead strengthening the prosperity, stability and security of all. It is based on the values of democracy, rule of law and respect of human rights.

The ENP was reviewed in 2011, following the 'Arab Spring' uprisings, and again in 2015. In this regard, a Joint Communication setting out the main lines of the review of the ENP has been published on 18 November 2015. Under the revised ENP, **stabilisation of the region, in political, economic, and security related terms**, is at the heart of the new policy. Moreover, the revised ENP puts a strong emphasis on two principles: a differentiated approach, to respect the different aspirations of our partners and to better answer EU interests and the interests of our partners; and an increased ownership by partner countries and Member States.



c) Neighbourhood, Development and International Cooperation Instrument (NDICI) – ‘Global Europe’ for the period 2021-2027

- The Neighbourhood, Development and International Cooperation Instrument (NDICI) – ‘Global Europe’ for the period 2021-2027. With this decision, the EU will be able to use €79.5 billion in current prices to foster global recovery over the next seven years. This envelope will be used for international partnerships on sustainable development, climate change, democracy, governance, human rights, peace and security in our neighbouring countries and beyond.
- The new instrument will particularly support countries most in need to overcome their long-term developmental challenges and will contribute to achieving the international commitments and objectives that the Union has agreed to, in particular the Sustainable Development Goals, the Agenda 2030 and the Paris Agreement. It merges several current external financing instruments under the EU budget. NDICI-Global Europe also unifies grants, blending and guarantees, which will allow the EU to promote public and private investment worldwide in support to sustainable development. Investment will be backed by a €53.4 billion External Action Guarantee, which will also cover the Western Balkans.



The Regulation 2021/947 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe

Legal basis of the Regulation: 1) article 209 TFEU dealing with the development cooperation policy of the EU (multiannual cooperation programmes with developing countries or programmes with a thematic approach- any agreement with third countries helping to achieve the objectives referred to in Article 21 of the Treaty on European Union -contribution of the European Investment Bank), and 2) article 212 TFEU relating to the economic, financial and technical measures, including financial assistance.

The Regulation lays down the objectives of the Instrument, the budget for the period from 2021 to 2027, the forms of Union funding and the rules for providing such funding.

Article 1, subject matter: **The association agreements**, partnership and cooperation agreements, multilateral agreements to which the Union is a party, and other agreements that establish a legally binding relationship between the Union and partner countries shall constitute the **overall policy framework** for the implementation of the Instrument (article 7, policy framework)



Countries and areas of cooperation (annexes 1-2)

Countries (among others): Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Morocco, Occupied Palestinian Territory, Syria, Tunisia.

Areas of cooperation among others: 1) Building resilience of states, societies, communities and individuals to political, economic, environmental, food, demographic and societal pressures and shocks, natural and man-made disasters and health crises including pandemics; 2) Supporting sustainable agriculture, forestry and fisheries to increase food security, create economic opportunities and jobs; 3) Promoting cooperation in the areas of science, technology and research in particular addressing poverty related and societal changes, open data, big data, artificial intelligence and innovation, while preventing the phenomenon of brain drain; 4) Developing and/or strengthening sustainable green and blue growth and circular economy in all economic sectors; 5) Promoting environmentally sustainable agriculture practices, including agroecology and biodiversity as well as to enhance mitigation and adaptation to climate change and promote environmental and social resilience and healthy ecosystems, taking advantage of the benefits of **existing trade agreements with the Union for sustainable development.**



Questions and answers [III]

- **1. What are the main objectives of the EU's external action?** 1) To protect democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. 2) To contribute, in the common interest, to the harmonious development of world trade,
- **2. If an EU policy conflicts with international trade organisations, which takes precedence?** Primary EU law prevails, i.e. basically the EU treaties. But not EU secondary law, i.e. regulations and directives.
- **3. What is the main objective of the European Neighborhood Policy?** Stabilisation of the region, in political, economic, and security related terms, is at the heart of the new policy.
- **4. How much money and for what purposes will be given by the EU under the revised European Neighborhood Policy?** The EU will be able to use €79.5 billion in current prices to foster global recovery over the next seven years. This envelope will be used for international partnerships on sustainable development, climate change, democracy, governance, human rights, peace.
- **5. What is the relationship between association agreements and receiving money under the European Neighborhood Policy?** The association agreements form the basis of the European Neighborhood Policy in the economic field in particular and facilitate the receipt of EU funds.



IV. European Union's trade policy: trade agreements

Trade outside the EU is an exclusive responsibility of the EU, rather than the national governments of member countries. This means the EU institutions make laws on trade matters and negotiate and conclude international trade agreements. The EU's responsibilities cover: 1) trade in goods and services; 2) the commercial aspects of intellectual property, such as patents; 3) public procurement, and 4) foreign direct investment. Article 207 of the Treaty on the Functioning of the European Union sets out the rules on EU trade policy.

Agreements in place: with 78 States, among them with Jordan, in force since 2002, and with Lebanon, in force since 2006 (association agreements). [Turkey, Customs union, in force since 1995, Israel, association agreement, in force since 2000, Palestinian Authority, Interim Association Agreement, in force since 1997] Recent agreements: 1) Canada, Comprehensive Economic and Trade Agreement (CETA) Provisionally applied since 2017, 2) Japan, Global agreement, in force since 2019 3) Singapore, Free Trade Agreement, in force since 2019, 4) Vietnam, Free Trade Agreement, in force since 2020, 5) New Zealand, 2023.

Agreements adopted, with 26 States (e.g. with Uganda, Economic Partnership Agreement, adopted but it has not signed or ratified).

Agreements under negotiation for an update: with 5 countries (e.g. with China, EU-China investment agreement, negotiations launched in 2013).



a) Associations agreements with Jordan and Lebanon: the main provisions

Reasons for concluding the Association: 1) historic links and common values, 2) the wish to strengthen those links and to establish lasting relations, based on reciprocity, solidarity, partnership and co-development.

The basis of the Association: the members attach importance to 1) the principles of the United Nations Charter, particularly the observance of human rights, democratic principles and economic freedom, 2) the free trade, as guaranteed by the General Agreement on Tariffs and Trade of 1994 (GATT) and by the other multilateral agreements annexed to the Agreement establishing the WTO, 3) a climate conducive to growth in economic relations between them, more particularly in the trade and investment sectors which are essential to the success of the economic reconstruction and restructuring programme and to technological modernization,

The aims of the Agreement are to: (a) provide an appropriate framework for political dialogue between the Parties, allowing the development of close relations in all areas they consider relevant to such dialogue, (b) establish the conditions for the gradual liberalisation of trade in goods, services and capital, (c) promote trade and the expansion of harmonious economic and social relations between the Parties, notably through dialogue and cooperation, (d) promote economic, social, cultural, financial and monetary cooperation, (e) promote cooperation in other areas which are of mutual interest.



The main provisions II

- **Free circulation of goods.** Nothing in this Agreement shall preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; of the protection of intellectual industrial and commercial property; of rules relating to gold and silver and conservation of exhaustible natural resources. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.
- **Free competition.** The following are incompatible with the proper functioning of this Agreement, insofar as they may affect trade : (a) all agreements between undertakings, which have as their object or effect the prevention, restriction or distortion of competition, as defined by their respective legislation; (b) abuse by one or more undertakings of a dominant position.
- **Public enterprises and enterprises to which special or exclusive rights have been granted:** the **Association Council** shall ensure that there is neither enacted nor maintained any measure distorting trade between the Parties. This provision should not obstruct the performance in law or in fact of the particular tasks assigned to these enterprises.
- **Intellectual property.** The Parties shall ensure adequate and effective protection of intellectual, industrial and commercial property rights in conformity with the highest international standards, including effective means of enforcing such rights.



The main provisions III

Public procurement contracts. The Parties shall take as their aim a reciprocal and gradual liberalisation of public procurement contracts.

Environment. The Parties shall encourage cooperation in preventing deterioration of the environment, controlling pollution and ensuring the rational use of natural resources, with a view to ensuring sustainable development. Cooperation shall be centered among others upon: 1) water quality in the Mediterranean, and control and prevention of marine pollution; 2) waste management, particularly that of toxic waste; 3) environmental education and awareness; 4) the effect of agriculture on soil quality and water quality; 5) soil preservation and conservation; 6) rational management of water resources;

Energy. Cooperation shall focus on: (a) promotion of renewable energy; (b) promotion of energy-saving and energy efficiency; (c) applied research relating to networks of databases linking the two Parties' economic and social operators; (d) supporting modernisation and development of energy networks and the interconnection of such networks with EU.



The main provisions IV

Approximation of legislation. The Parties shall use their best endeavours to approximate their respective laws in order to facilitate the implementation of this Agreement.

Cooperation in reinforcement of institutions and rule of law. The Parties reiterate the importance of the rule of law and the proper functioning of institutions at all levels in the areas of administration in general, and law enforcement and the machinery of justice in particular. An independent and effective judiciary and well-trained legal profession are of particular importance in this context.

Institutional provisions. An **Association Council** is hereby established which shall meet at ministerial level when circumstances require, on the initiative of its Chairman and in accordance with the conditions laid down in its rules of procedure. The Association Council shall examine any major issues arising within the framework of this Agreement and any other bilateral or international issues of mutual interest. The Association Council shall draw up its decisions and recommendations **by agreement** between the two Parties. Subject to the powers of the Association Council, an **Association Committee** is hereby established which shall be responsible for the implementation of this Agreement.



b) EU's investment policy

- The priorities for cooperation through financial assistance as proposed in the Multi-Annual Indicative Programme (MIP) are in line with 1) the Regulation (EU) 2021/947, 2) the broader regional political priorities of EU relations with the partners in the Southern Neighbourhood, and 3) the Association Agreements. [See also the Commission's delegated regulation 2021/1530, supplementing Regulation 2021/947].
- **The actions (financial contribution):** All actions taken under the MIP shall comply with EU legislation. The MIP will contribute among others to enhancing good governance and supporting reforms, to strengthening an inclusive and resilient economy and to promoting a green and sustainable recovery. The MIP will contribute to achieve the EU's climate target and biodiversity ambition, the 2030 Agenda for Sustainable Development as well as Lebanon's and Jordan's national climate pledges under Paris Agreement. Specifically, this priority will focus on energy security and green energy, furthering a circular economy and conservation of natural resources.



Supporting the food and agriculture sector

- Building on the European Green Deal, the EU will support the global transition to sustainable agri-food systems. Through its external policies, including all its partners in bilateral, regional and multilateral fora. The EU will encourage the production of agri-food products complying with high safety and sustainability standards and will support small-scale farmers in meeting these standards and in accessing markets (InvestEU Fund, EU taxonomy, EU CAP facilitating investment support to improve the resilience and accelerate the green and digital transformation of farms).
- The digitalisation of the agri-food sector could also create a new momentum for economic development by supporting the transition toward a more competitive, commercially oriented, and export-oriented agriculture and agri-business sector (Digital Revitalization of the Agri-food Sector in Mashreq – Iraq, **Jordan and Lebanon**, World Bank and American University of Beirut, 2021).



EU financial instruments

- The EU provides loans to businesses of all types for investment in research and innovation. It also provides guarantees to help beneficiaries to obtain loans more easily or at better conditions from banks and other lenders. The EU may also financially participate in a project by owning parts of it. Financial instruments can also be combined with grants.
- Financial instruments are implemented in partnership with public and private institutions such as banks, **venture** capitalists or angel investors. These financial institutions determine the exact financing conditions – the amount, duration, interest rates and fees. The applicant receiving funds through EU financial instruments must allow the intermediary financial institution to conduct their due diligence, including on-the-spot checks and inspections. Failure to comply will result in financing being delayed or denied.
- The European Investment Bank (EIB) offers loans, guarantees, equity investments and advisory services. Also called the “lending arm” of the European Union, it works closely with other EU institutions to support EU policies in over 140 countries around the world.
- The InvestEU Programme gives an additional boost to investment, innovation and job creation in Europe over the period 2021-27. It aims triggering a new wave – more than €372 billion - in investments using an EU budget guarantee



Financial instruments II

- Under **NextGenerationEU** – the temporary recovery instrument of €806.9 billion (in current prices) and a novelty in the 2021-2027 EU budget – funds are managed directly by the European Commission, but implemented through Member States. To raise the necessary funds for NextGenerationEU, the Commission will borrow on the capital markets on behalf of the EU.
- The majority of funds from NextGenerationEU will be spent through the **Recovery and Resilience Facility (RRF)** programme. €723.8 billion in loans and grants (in current prices) will be available for Member States to mitigate the economic and social impact of the coronavirus pandemic and make European economies and societies more sustainable, resilient and better prepared for the challenges and opportunities of the green and digital transitions.
- **EU taxonomy.** The Taxonomy Regulation (2020/852) entered into force on 12 July 2020. It establishes the basis for the EU taxonomy by setting out the 4 overarching conditions that an economic activity has to meet in order to qualify as environmentally sustainable. The taxonomy is aligned with a net zero trajectory by 2050 and the broader environmental goals other than climate. The Commission launched an educational and user-friendly website, the EU taxonomy navigator- [<https://ec.europa.eu/sustainable-finance-taxonomy/>] - offering a series of online tools to help users better understand what the EU taxonomy is and which activities/sectors and technical screening criteria are covered.



V. Commercial law

Introduction. In general corporate law includes all incorporated forms of business organization and thus encompasses more than company law. Companies are creatures of national law. They exist only by virtue of the varying national legislation which determines their incorporation and functioning.

Incorporation means the creation of a corporation, that is a legal person separate from its members. The requirements may vary according to the different categories of legal persons. In several countries incorporation takes place by notarial deed, for example in Germany, but registration is required before the company comes into existence.

Registered companies can be classified in several ways: for instance, limited and unlimited companies, in relation to the liability of their members, or private and public companies, in relation to the requirements, particularly with regard to capital and company structure.

Accordingly, as a rule, only public companies are allowed to be listed on a stock exchange. The private company is better suited for the small or medium-sized enterprise that does not have to call for funding on the capital market.



a) European Commercial law

- European company law is a part of European Union law, which concerns the formation, operation and insolvency of companies (or corporations) in the European Union.
- Article 49, second paragraph, of the TFEU, guarantees the right to take up and pursue activities in a self-employed capacity and to set up and manage undertakings, in particular companies or firms. The purpose of EU rules in this area is to enable businesses to be set up anywhere in the EU, enjoying the freedom of movement of persons, services and capital, to provide protection for shareholders and other parties with a particular interest in companies, to make businesses more competitive, and to encourage businesses to cooperate over borders.
- EU company law rules cover issues such as the formation, capital and disclosure requirements, and operations (mergers, divisions) of companies. The EU creates minimum standards for companies throughout the EU and has its own corporate forms. All member states continue to operate separate companies acts, which are amended from time to time to comply with EU Directives and Regulations.



EU corporate forms

The European Company (SE) After a long period of negotiations (lasted 30 years), the Council adopted the Regulation (EC) No 2157/2001 on the Statute for a European company. This enables a company to be set up within the territory of the EU in the form of a public limited liability company, known by the Latin name 'Societas Europaea' (SE). Several options are made available to undertakings of at least two Member States that wish to set themselves up as an SE: merger, formation of a subsidiary, or conversion into an SE. The SE must take the form of a company with share capital. In order to ensure that such companies are of reasonable size, a minimum amount of capital is set, i.e. not less than EUR 120 000. **The European Cooperative Society (SCE)**. [Regulation (EC) No 1435/2003] puts in place a genuine single legal statute for the SCE. It enables a cooperative to be established by persons established under the laws of different Member States. With a minimum capital of EUR 30 000, these new SCEs can operate throughout the single market with a single legal personality. **European Economic Interest Groupings (EEIGs)**. (Council Regulation (EEC) No 2137/85 enables a company in one Member State to cooperate in a joint venture with companies or natural persons in other Member States, the profits being shared between the members.



European Green Deal and new rules

- On 5 January 2023, the Corporate Sustainability Reporting Directive ((EU) 2022/2464) entered into force. The directive modernises the rules concerning the social and environmental information that companies are obliged to report. The new rules will ensure access to the information necessary to assess investment risks arising from climate change and other sustainability issues, creating a culture of transparency about the impact of companies on people and the environment.
- Reporting costs will be reduced for companies over the medium to long term by harmonising the information to be provided [e.g. a brief description of the undertaking's business model and strategy, including: (i) the resilience of the undertaking's business model and strategy in relation to risks related to sustainability matters]



European Green deal and new rules

- Third-country undertakings which have a significant activity on the territory of the Union should also be required to provide sustainability information, especially on their impacts on social and environmental matters, in order to ensure that third-country undertakings are accountable for their impacts on people and the environment and that there is a level playing field for companies operating in the internal market. Therefore, third-country undertakings which generate a net turnover of more than EUR 150 million in the Union and which have a subsidiary undertaking or a branch on the territory of the Union should be subject to Union sustainability reporting requirements.
- On 25 April 2023, the Legal Affairs Committee adopted its position on a proposal for a corporate sustainability due diligence directive. The proposed legislation would oblige firms to identify, and where necessary prevent, end or mitigate the negative impacts of their activities, including those of their business partners, on human rights and the environment. This includes child labour, slavery, labour exploitation, pollution, environmental degradation and biodiversity loss.
- The European Parliament is considering the Commission's proposal of 29 March 2023 to further expand and upgrade the use of digital tools and processes in company law.



b) International commercial law

International Commercial Law is a body of legal rules, conventions, treaties, domestic legislation and commercial customs or usages, that governs international commercial or business transactions. A transaction will qualify to be international if elements of more than one country are involved.

Lex mercatoria refers to that part of international commercial law which is unwritten, including customary commercial law; customary rules of evidence and procedure; and general principles of commercial law.

Incoterms. There were first published in 1936. Since then, they have been revised every 10 years. Incoterms inform sales contract by defining respective obligations, costs, and risks involved in the delivery of goods from seller to buyer. The International Chamber of Commerce (ICC) is responsible for revising Incoterms periodically to reflect changing practices in international trade. The Incoterms are classified in different classes: 1) Free (FOB, FAS, FCA); 2) Cost (CPT, CIP, CFR, CIF); 3) Delivery (DAP, DAT, DDP). There are also Rules for any modes of transport: ExW, FCA, CPT, CIP, DAT, DAP, DDP and Rules for sea and inland waterway transport: FAS, FOB, CFR, CIF.

Any given Incoterm, in most jurisdictions, will not be incorporated into a contract without express or implied reference to it. They are standardised and published, available for incorporation into international sale contracts at the parties' discretion.



Questions and answers [V]

1. How does commercial law affect new businesses in the agri-food sector? Depending on the capital, the way of financing, the way of administration and the development of international trade, different types of commercial organization are offered.

2. If the new business wants to export to the EU, in what ways can it do so? EU law allows new businesses to set up as long as they are incorporated in an EU state, or set up a subsidiary or branch in a member state, in accordance with applicable national law.

3. Are there trading companies created by EU law? European Company, European Cooperative Society and European Economic Interests Groupings

4. Are there major differences between the national laws of EU Member States when it comes to doing business across the EU? The EU has issued several acts harmonizing national laws in the corporate sector. However, even today there are still differences between the 27 member states.

5. What is applicable in international corporate law? International Commercial Law is a body of legal rules, conventions, treaties, domestic legislation and commercial customs or usages, that governs international commercial or business transactions. A transaction will qualify to be international if elements of more than one country are involved. Lex mercatoria refers to that part of international commercial law which is unwritten, including customary commercial law; customary rules of evidence and procedure; and general principles of commercial law.



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