

Ensuring safety requirement to *home food* and *home restaurant*: focus on a regional experience based on sector legislation, and future perspectives

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Abstract

The sharing economy provides many new business opportunities, particularly in local areas where culinary traditions guarantee major appreciable sensorial features. In this context, home food and home restaurant find their place. The first one refers to businesses that, in a home kitchen or in premises used mainly as a private home, produce food for retail, while the second one is defined as food businesses producing and administering food and beverages in a private dwelling house. This manuscript analyses the sector legislation applicable to these new business forms, the adherence to the requirements prescribed by the recent guidelines, the executive compliance applicable to the inspection phases, as well as the perspectives and future challenges that healthcare workers designated for food safety official controls will face.

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Introduction

In 2019, an article entitled “*Call it a crime of pasta*” was published on the front page of the New York Times, concerning the home production of *orecchiette*, a local and traditional kind of pasta, in the town of Bari, located in Southern Italy. This topic recalls a lengthy report signed by Jason Horowitz, focusing to the hindering caused by bureaucracy towards the centuries-old tradition of the pasta-makers of the Arco Basso in the old town of Bari, where *orecchiette* are home-produced and exhibited outdoors, on both trays and tables, alongside the streets of the historic centre (1). Among other things, this tradition is a well-established attraction for tourists, as well as the ideal setting to show local craftsmanship, also captured in some movies and commercial advertisings.

The matter of a potential act in contrast to the sector’s legislation was initially raised by the requisition and contestation of the offence committed by a restaurateur in the Apulian regional capital, guilty of having purchased *orecchiette* from the street pasta-makers of the historic centre. Following the rituals already traced by their ancestors, these sellers sold *orecchiette* in the alleys of Bari’s historic centre directly “*from the producer to the consumer*”, without any receipts, labelling, list of ingredients and traceability. In the case described, however, *orecchiette* were sold to a Food Business Operator (FBO) and, therefore, they were intended to be part of the food chain. The strong objection of the pasta-makers was not long in coming and, as reported by the Journal, sellers tried to justify their activity maintaining that “*it is legal to sell small bags for personal use, but deliveries to restaurants require a licence*”, so they started worrying about authorisations, hygiene requirements, receipts and taxes. A hitherto silent question had suddenly arisen, as the production and selling of *orecchiette* in the alleys of the old

town centre, so far considered an added value thanks to the requirement of goodness and tradition and appreciable sensory aspects, suddenly became a problem, expression of an illegal and, potentially, dangerous production (2).

From this event, it is undeniable the need for a careful consideration both on existing and rapidly expanding realities, linked to scenarios associated to the current food economy, and to the economic crisis resulting from the Covid-19 pandemic and from the current Russo-Ukrainian war. Therefore, it is useful to evaluate the sector legislation for consumers’ protection, as well as the applicability of official controls in local contexts, with different features compared to traditional food companies.

State of the art of European and national legislation

As per law, food production and retail in a domestic kitchen or on premises primarily used as a private home is defined as “home food”, whereas “home restaurant” refers to an activity consisting of producing and serving foods and drinks to customers, within a domestic kitchen or on premises used primarily as a private home. In particular, the home restaurant should be an occasionally performed activity, which represents an opportunity for offering typical local dishes to customers in an easy-going atmosphere, using local products and following ancient traditions; connection and agreements with home restaurants are mostly made online, through dedicated web-platforms useful for booking. In recent times, the home restaurant businesses increased, being one of the new expressions of the sharing economy, and having as its key points the association of economic convenience with social and experiential advantages. In particular, starting from the hypothesis that food has always been considered a synonym of conviviality,

alongside the simplicity of preparing meals using traditional methods and raw materials coming from local sources. Moreover, in the home restaurant, the opportunities to meet and share experiences and new forms of profit are achieved without the typical entrepreneurial investments. Nevertheless, these events should be carried out on an occasional basis and for a limited number of consumers, following procedures dictated by a homogeneous regulation. In continuity with and by transposition of a term originally coined for Romagna housewives, nowadays "*le Cesarine*" defines a set of passion cooks who organize events in their private homes for natives and tourists, trying to pass on the culinary and gastronomic tradition of the Bel Paese, jealously guarded by them.

In Italy, home restaurants spontaneously appeared, fully establishing as economic realities (about 14,000 home restaurants are active along the Country), reflecting the natural path having taken worldwide by these businesses (3).

A general regulatory provision is dictated at Community level with Regulation (EC) No. 852/2004 which, in Annex II, Chapter III, reports the "*requirements for movable or temporary premises, and premises used primarily as a private dwelling house but where foods are regularly prepared for placing on the market, and vending machines*" (4).

At the same time, as a result of the current Regulation (EC) No. 178/2002, both home food and home restaurants are considered food businesses and, therefore, FBOs must ensure the full compliance with the provisions of food legislation, and the activities carried out are subject to health notification according to Article 6 of Regulation (EC) No. 852/2004. It is, therefore, mandatory to comply with hygiene and health requirements, to adopt FBO's own-check procedures (HACCP) and, for the competent authority, to perform official controls (5). In addition to the

Community regulations, in recent years various draft laws have followed in Italy, but none has succeeded in completing its process becoming law. Therefore, to date, the debate on the origin of these activities, on the fulfilments useful for their launching, and on the best way to perform official controls still appears to be open. Attempts to legislate at national level on this matter include several ministerial notes and resolutions of the Italian Ministry of Economic Development (MISE):

- the MISE resolution No. 50481 of 10th April 2015 indicating that home restaurant, even if carried out only on certain days and for a limited number of people, providing for a payment, is to be considered to all intents and purposes an economic activity open to customers that is subject to all the rules laid down for retail and catering businesses (6);
- the MISE resolution No. 332573 of 21th October 2016 clarified that the home restaurant activity is subject to the controls and sanctioning powers of the public safety authority, similarly to the retail and catering businesses (7);
- the Ministerial note of the MISE No. 17890 of 2017 that, in response to the Municipality of Urbania (Province of Pesaro/Urbino, Central Italy), specified that these activities, even if carried out only on certain days and for a limited number of people, being advertised on websites and addressed to an indistinct public in equipped premises open to customers and with a service payment, is to be considered to all intents and purposes an activity of administering food and beverages (8);
- the MISE resolution No. 493338 of 6th November 2017 establishing that these activities can only be performed by those who are endowed with the requisites of honourableness and professionalism provided for by art. 71 of Italian Legislative Decree no. 59 of 26th March 2010; furthermore, the activity must be notified and, according to the note no. 557/PAS/U/015816 of 14th

October 2016 of the Ministry of the Interior on the applicability of Ministerial Decree no. 564 of 1992, it is subject to the controls and any sanctioning and prohibitive powers of the Public Safety Authority common to all businesses (9, 10);

- on the contrary, the home restaurant bill approved on 17th January 2017 by the Italian Chamber of Deputies in the unified text no. 2647 was not afterwards approved in the Senate due to the rejection by the Antitrust Authority because the Guarantor stated that the legislator “*introduces limitations to the exercise of the activity of home restaurant that do not appear justified*” because it provides for the use “*of digital platforms as the only way to carry out the activity of home restaurant*” and, therefore, effectively reducing “*the offer of restaurant services for customers less inclined to the use of digital/electronic purchasing systems*” and creating “*discrimination with traditional restaurateurs, able to promote their business and receive bookings through websites, keeping the possibility of having direct contact with customers*”. Furthermore, the Guarantor also objected “*on the obligation to pay the services with digital platforms before having benefited*”, as well as on the “*quantification of the maximum number of seats and the annual gain limited to €,000, which would contrast with the principles of economic freedom sanctioned by Decree no. 59/2010, by the subsequent liberalisation Decrees, and by the Article 41 of the Italian Constitution, which protects free economic initiative and competition*” (11, 12): the same route followed by the bill of 2018 entitled “*Discipline of the home restaurant activity*”, never converted into a legislative measure (13).

Referring to the administrative jurisprudence, opinions have been expressed by:

- Campania’s Regional Administrative Court (TAR) with ruling number 3883/2018, stating that “*since no special derogatory*

regulation is in force for the activity consisting in administration of food and beverages [...] moreover not on an occasional basis [...] the ordinary regulations governing precisely such administrations must apply, [...] regardless of the circumstance that the activity takes place in the house of a person preparing foods”;

- Ministry of the Interior through the Police Headquarters of Reggio Calabria in 2019, which considers that, where the activity is intended for specific consumers and carried out on an occasional basis, it is not to be ascribed to a true and proper businesses and it is not subject to the regulations laid down for the administration of food and beverages, being able to take advantage of simplification of the fulfilments and access to the activity;

- Judgement of the Justice of the Peace of San Miniato (Florence) No. 139/2019 establishing the legality of the activity performed, focusing to a case of a home restaurant’s owner having not notified his own activity (14).

From the heterogeneous observations hitherto represented, it can be deduced that the home restaurant business is mainly attributable to the activity of administering food and beverages, publicly accessible, and is therefore subject to the discipline of Regulation (EC) No 852/2004. However, the Article No. 1 exempts from its application only private household activities, since it states that the Regulation shall not apply, among the others, to the primary production for private domestic use and to domestic preparation, handling and storage of food for private domestic consumption. Hence, only private individuals who prepare food for their own consumption are therefore exempt from the obligation to comply with these Regulations. It follows that cooking in a home location for customers, is equalized to a FBO and, as such, it is required to apply procedures based on the principles of the HACCP system, complying with the

good hygiene and manufacturing practices (Art. 1, paragraph 1, letter d, Reg. (EC) No. 852/2004) (15).

Executive compliance at local level

The Apulia Region, a local area where the presence of these types of activities is widespread, with Regional Council Resolution (R.C.R.) No. 119 of 11th February 2020, adopted the “*Guidelines for the application of food hygiene Regulations in activities of preparation for placing on the market and/or for the administration of food on premises used mainly as a private home (home food - home restaurant)*”, drawn up by the working group established by the Interregional Coordination of the Prevention and Public Health Area of the Ministry of Health, through the Veneto Region (lead partner), and formalized with the document of the Italian Ministry of Health No. 478280 of 23rd November 2018.

This document confirms “*home food: a food business that, in a home kitchen or on premises used mainly as a private home, produces food for retail*” while “*home restaurant: a food business that produces and/or administers food in a private dwelling house*”, and indicates both the administrative formalities and the structural and hygienic requirements necessary to start the activities (submission of a Certified Notification of Commencement of Business –SCIA– through the Unique Branches of Productive Activities –SUAP– managed by the municipal administrations) according to art. 6 of Regulation (EC) No. 852/2004. The document reinforces the concept that, although the aim of enhancing the typical gastronomic specialities of this area, it is mandatory to comply with all the Community and National provisions governing the food safety (16, 17).

The aforementioned provisions include, as part of the qualifying proceeding, the

possibility for FBOs to notify to the Local Health Authorities, through the SUAP, the activities they fulfil, i.e. production of vegetables in home kitchens (in the vegetable category) included in home food category; production of food in home kitchens (bakery and pastry products, ice cream and ready to eat foods category) included in home food category; production of food in home kitchens (food of animal origin, if no approval number is required) included in home food category, and home restaurants (included in restaurant category).

In the annex to R.C.R. 119/2020, some chapters define the hygiene requirements of the premises, equipment, waste management, water supply, staff hygiene, allergens, food contact materials, transport, FBOs training, traceability (recall and withdrawal), labelling, food presentation and consumer information, and non-compliant management. In view of the hazards and risks associated with the production of certain foods, special recommendations are provided for the production of jams, marmalades, compotes, fruit juices and syrups, pickles and other preserved and semi-preserved foods, fermented vegetables, pastries and ready-to-eat food, and fish products intended to be eaten raw. The guidelines expressly prohibit the production or administration of gluten-free foods, intended for people suffering from coeliac disease and falling within the scope of R.C.R. 890/2012 (18). It is remarked that the FBOs are responsible for guaranteeing the full compliance with the provisions of food legislation in home food and home restaurant, similarly to all types of food sector businesses.

Official controls planning and execution activities, performed to home food and home restaurant, are delegated to the Prevention Departments through the Food Hygiene and Nutrition Services (SIANs) and the Veterinary Services (SIAVs Area B) of the Local Health Authorities, within their respective competences. Access by inspectors

may take place both during opening hours and at other times: in any case, it must be pre-announced and formalized, with the respective consent of the FBO. It is evident that this circumstance represents a strong contradiction, a sort of derogation, from the current Regulation (EU) No. 2017/625 on official controls, since official controls are not normally pre-announced (19). Specifically, in order to reconcile the control activities with the protection provided by the legal system for private dwellings, in notifying the activity the FBO shall issue a specific declaration for registration, concerning the willingness to allow the access to inspectors. Furthermore, in providing this declaration, the FBO undertakes to ensure the control of the competent Authority at all times, guaranteeing the control on request, too.

Discussion

A careful examination of this matter reveals the complexity, for those FBOs who provide the activities of home food and home restaurant, of complying with the more general requirements and provisions of Community legislation, as well as the more stringent requirements set out in an act as an operational recommendation or Guidelines. On the other hand, healthcare workers (HCWs) in charge of official controls might not be able to verify on-site all the prescribed requirements and provisions, sometimes only theoretically, or partially applicable, to a domestic entity.

In particular, referring to the enterprises falling within the scope of the Guidelines, it may be likely to be:

- easier to notify the food activity, to train and to equip with a simplified own-check system, guaranteeing the risk management and consumer protection, in accordance with Chapter 17 of the “*Guidelines for official control pursuant to Regulations (EC) 882/2004 and 854/2004*” (Rep. Acts n. 212/

CSR of 10th November 2016), handling food according to fixed procedures, in adherence to specific indications for the type of food the FBO intends to produce (20);

- more difficult to ensure that:
 - the hygienic conditions of the premises used within the food business (e.g. kitchen, toilets, storage rooms, administering or selling places) and the equipment used for preparing food (e.g. electrical appliances, refrigerator, crockery, cookware, etc.) are suitable for a food business “*in accordance with the law*” and are not used promiscuously with other people living in the same household or cohabiting;
 - adequate space in production places is guaranteed to avoid cross-contamination with any substances causing food allergies or intolerances;
 - the maximum number of simultaneously commensals in the serving place is respected;
 - appropriate procedures are put in place for pest management and to prevent pets from entering the food production, processing and storage places or areas;
 - measurements are taken and special equipment or devices are used (thermometers, pH-meters, refractometers, blast chillers, autoclaves, etc.) for:
 - * the monitoring of specific blast chilling, pasteurization and commercial sterilization processes;
 - * the determination of nutritional and shelf-life values;
 - * the determination of the pH value;
 - * the determination of activity water value;
 - suitable procedures are put in place to produce a proper labelling and to allow an adequate traceability;
 - specific training for food handlers is successfully attended and constantly updated.

It seems shareable that the guidelines issued are intended to safeguard the end-users of such activities (customers) providing, at

the same time, a useful tool for HCWs in charge of official controls.

However, in the cases of diseases presumably related to the consumption of food produced in home food and home restaurant businesses, both of food-borne and of water-borne origin, serious difficulties could occur in carrying out epidemiological investigations, in sampling food matrices or even in activating alert systems (21). The reasons that would justify such difficulties are related to the following hypotheses:

- being occasional activities, due to their extemporaneous nature and the main use of raw materials from local production, they might not guarantee the full traceability of the raw materials used and the food produced;

- the professional training of the FBOs may not be in line with the provisions of mandatory European and national legislation, since they are small entrepreneurs who prepare traditional local food "*at home*", similarly to meals intended for relatives or friends;

- since extemporaneous preparations are produced, a menu with the indication of allergens may not be willing and, in some cases, sampling activities may not be carried out or procedures and equipment useful to ensure food safety (e.g. pHmeters, blast chillers, pasteurisers, etc.) could not be available (22, 23).

In this context, it seems clear that many questions remain open, and in some cases, there is an objective criticism for the full application of the Regulations in force by inspectors, being aware that any objection could be the object of further controversies and complaints, depreciating the actions taken by the staff of the competent authorities. Indeed, the compliance with the requirements of the sector legislation delineates the limits within the businesses can operate, although the flexibility is recognized, according to the size of the company and the related assessed risks.

Finally, it is evident that the peculiarity of home food and home restaurant activities in private homes, which should be carried out on an occasional basis, but increasingly is taking the characteristics of a continuous and commercial activity, is difficult to legally reconcile with a precise and unambiguous categorization. This, also taking into account the lack of a specific ATECO/ISTAT code (economic activities classification adopted by the Italian National Statistical Institute) and the potentially consequent sub-notification or incorrect notification. However, as a rule, in the current Integrated Regional Control Plans, which refer to the Multi-annual Control Plans, the need to carry out targeted controls at these forms of new food businesses does not appear punctually, even though control plans must be risk-based. This correlates to the further difficulty of quantifying, both locally and nationally, the official controls performed to date on these types of businesses, and the related outcomes. It should also be noted that the different types of official controls (inspection, verification, screening, targeted screening, audits and sampling, analyses, tests and laboratory diagnosis) are included in the current Essential Assistance Levels, which must be guaranteed by the Italian National Health Service (24).

Moreover, in the face of an increasing globalization of markets and goods in favor of large multinational food companies (providing greater guarantees of hygiene and health quality by benefiting from the presence of in-house Quality, Research and Development Offices), the incorrect application of Community and national food safety Regulations in small and local businesses, home food and home restaurants included, can create not entirely negligible public health issues.

Therefore, if on the one hand a sure convivial, sensorial experience and appreciable palatability of food produced in respect of local traditions is guaranteed, on

the other hand practicing these activities in places intended for private homes, adopting domestic-type procedures, makes it difficult the slavish application of the mandatory health regulations, aimed at guaranteeing food safety.

Conclusions

Referring to the approaches and strategies of the current National Prevention Plan 2020-2025, which provide for multidisciplinary, cross-sectoral, integrated and coordinated preventive actions, the activities of the HCWs in charge of official controls, mainly Environmental Health Officers, cannot take the form of a mere verification of compliance to the mandatory legislation, but it must lean towards learning from the territory, also in the inspection phases. It is, therefore, useful to carry out a food risk assessment suitable for the nature of the inspected businesses, to catch the opportunities to improve operations and executive compliance through the adoption of management systems based on the principles of impartiality, appropriateness, consistency, quality, effectiveness and efficiency and, in any case, defending and enhancing, through the adoption of common sense, the priceless heritage of local traditions handed down from generation to generation, especially in pandemic periods (25, 26), this must include also environmental measures of control and prevention (27, 28).

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Riassunto

Garantire i requisiti di sicurezza alimentare applicabili a home food e home restaurant: focus su un'esperienza regionale basata sulla legislazione di settore e prospettive future

La sharing economy fornisce numerose opportunità imprenditoriali, particolarmente diffuse in contesti territoriali in cui insistono tradizioni culinarie garanti di caratteristiche sensoriali apprezzabili. In questo contesto trovano collocazione gli *home food*, imprese che operano all'interno di cucine domestiche o in locali utilizzati principalmente come abitazioni private, producendo alimenti destinati alla vendita al dettaglio, e gli *home restaurant*, attività caratterizzate dalla preparazione e somministrazione di alimenti presso abitazioni private. Il presente lavoro analizza la normativa di settore riferita a queste tipologie imprenditoriali, la conformità ai requisiti dettati dalle recenti linee guida, l'aderenza esecutiva nelle fasi ispettive, oltre alle prospettive ed alle sfide future che dovrà affrontare il personale sanitario deputato ai controlli ufficiali in materia di sicurezza alimentare.

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