

Food labeling in Argentina. Decoding impacts on the Argentine Food Code

Rotulación y etiquetado de alimentos en el régimen argentino. El fenómeno de la descodificación y su impacto en el Código Alimentario Argentino

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ABSTRACT

This work aims to analyze the characteristics of the legislative codification technique in Argentina, and whether, since the enactment of the Food Code to the present, this technique has been affected by a decoding normative evolution, considering the food labeling regime a particular study case. As a result, three lines of legislative alteration or modification distorting the mentioned technique re identified. This generates inconsistencies and ambiguities in the legislation, and consequent negative effects on the application, compliance and understanding of food regulations in the industry.

Keywords

codifying • decoding • food code • legislative technique • labeling

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RESUMEN

Este trabajo procura analizar las características de la técnica legislativa de la codificación en el régimen de alimentos de Argentina y si, desde la promulgación del Código Alimentario a la actualidad, dicha técnica ha sido afectada por una evolución normativa descodificante, tomando como caso de análisis particular el régimen de rotulado de alimentos. Como resultado, se identifican tres líneas de alteración o modificación legislativa que desnaturalizan claramente a la referida técnica, lo que genera necesariamente incoherencias y ambigüedades en la legislación, con los consiguientes efectos negativos en la aplicación, cumplimiento y comprensión de las normativas en la industria alimentaria.

Palabras clave

codificación • descodificación • código alimentario • técnica legislativa • rotulado

INTRODUCTION

Since 1969, Argentina has adopted a food regime based on the legislative codification technique. Law 18248 approves a Food Code ordered in Annex I of Decree 2126/71.

This legislative regulation strategy prioritizes a single legal text systematized in an organic unit through a specific methodology, which provides internal coherence to the set of regulations integrated as a universe. Codifying is not collecting or compiling various laws issued on the subject, but achieving a legal text systematized by a single regulatory logic.

But since its sanctioned date, the Argentine Food Code has been subject to multiple and repeated internal reforms, motivated by various needs and causes, also motivating and responding to public policies of each era – which have not always had the same objectives. Numerous special laws on food have also been issued. As external regulations, these laws separately complement the Code.

Even in the legal harmonization generated from the regional integration process of the Southern Common Market (MERCOSUR - acronym in Spanish), numerous rules on food have been issued that -when incorporated into the Code- have impacted its regulations.

This situation raises concern as to whether the proliferation of norms -often disorderly or uncoordinated-occurring for more than half a century has affected the organicity and clarity of the Code as a whole. In short, if such an impact had occurred, the initial legislative technique that organizes the Food Code would have been devalued to the detriment of legal efficiency and effectiveness, and the legal security that the regulatory system must provide.

This work seeks to analyze the characteristics of the legislative codification technique in the Argentine food regime and state whether, since the enactment of the Food Code to the present day, this technique has been affected by a decoding normative evolution, taking labeling regime as study case.

To this end, it is hypothesized that the lack of respect for the technique of legislative codification in the partial reforms of the Argentine Food Code and other food regulations issued in the last half-century can generate inconsistencies and ambiguities in the legislation, which in turn can have negative effects on the application, compliance and understanding of regulations in the food industry.

MATERIALS AND METHODS

The article presents a qualitative analysis of the decoding phenomenon in the Argentine Food Code; particularly considering the labeling regime stipulated in Chapter V of this Code, and the impact caused therein by formal and material decoding processes. To this end, the intrinsic modifications produced in Code and the incidence of external laws, are individualized.

An observational methodological design with a descriptive-explanatory scope analyzed the Argentine Food Code considering two well-differentiated phases.

The first phase focuses on specifying the characteristics of codification as a legislative technique for the Argentine Food regime, and the decoding risk due to normative modifications developed without considering such legislative technique. The second phase identifies the legal modifications in the labeling regime -internal and external to the Code text- and the fragmentation caused to the current regime.

RESULTS

The Argentine food code as legislative technique

The legal approval of a "Code" implies a legislative technique systematically organizing the set of regulations on a subject in a single legal text. "Codifying" means much more than compiling existing regulations; it gives organic unity to a set of norms endowed with intimate cohesion due to their meaning (12), simplifying and unifying their interpretation and application for the benefit of legal effectiveness, efficiency, and certainty.

Under this concept, dictating a code is not a mere compilation of anarchic precepts among themselves, but rather implies a coherent legal text that requires classification, distribution, and coordination of the materials with which it is constructed (20). For this reason, the legislative technique of codification should not be confused with mere "collections," "indexes," "compilations," or "recompilations" of laws by subject matter or historical era presented in order in a repertoire, or with "digests" which the current texts present in a similar way but without an organic character -typical of codification- that systematizes its content as a unit (7, 22).

Such repertoires and digests, although they allow the identification of the regulations that have been issued or even their state of validity, do not guarantee a level of coherence that allows overcoming shortcomings such as inflation and regulatory pollution, that is, the overabundance and redundancy of laws that make the regime unclear. As Campos (2018) observes, the disorderly proliferation of norms devalues the rule of law and generates a significant lack of legal security.

A code, on the other hand, is a rationally formed legal text based on harmonious and coherent principles (19). It implies a legislative technique based on a methodology that provides coherence and order to a universe of institutions and norms formed as a single legal instrument, ensuring organicity and clarity as a whole (5).

Codified regulations make it easier to verify the current law, offering clarity, concision and legal certainty (7, 21), helping to avoid antinomies and other normative failures to be overcome by scope interpretation, with the consequent interpreter bias that generates inconsistencies and ambiguities on application, compliance and understanding of regulations.

The food regime in Argentina has been implemented under the legal technique of codification since 1969, with the sanction of Law 18248 by which the Argentine Food Code was approved and put into effect. At that time, this Code systematized in a single regime the right to food, which applies to any person, commercial firm or establishment that produces, divides, conserves, transports, sells, displays, imports or exports food, condiments, beverages or raw food materials and additives.

The food regulation contained in this Code is organized into twenty-two chapters comprising 1417 articles. Seven chapters establish transversal regulations for the entire food industry -(I) General Provisions; (II) Food Factories and Businesses; (III) Food Products; (IV) Utensils, Containers, Packaging, Devices and Accessories; (V) Food Labeling and Advertising; (XX) Official Analytical Methodology; (XXI) Procedures-. The remaining chapters establish specific regulations on the different types of foods and food products -(VI) Meat and Related Foods; (VII) Fatty Foods, Food Oils; (VIII) Dairy Foods; (IX) Farinaceous Foods: Cereals, Flours and Derivatives; (X) Sugary Foods; (XI) Vegetable Foods; (XII) Hydric Beverages, Water and Carbonated Water; (XIII) Fermented Beverages; (XIV) Spirits, Alcohols, Distilled Alcoholic Beverages and Liquors; (XV) Stimulant or Fruitive Products; (XVI) Correctives and Coadjuvants; (XVII) Dietary Foods; (XVIII) Food Additives; (XIX) Flours, Concentrates, Isolates and Protein Derivatives; (XXII) Miscellaneous-.

Finally, it should be clarified that the same Code and its regulations (art. 2 Regulation approved by Decree 2126/71) have contemplated specific cases in which the codification yields specific regulations on wines and meats so that the Food Code –although valid in such matters- only applies supplementarily. This situation was initially anticipated as temporary in article 1411 of the original text ordered by Decree 2126/71 (13), contemplating a process of incorporation into the Code that was never finalized.

Modification of the Food Regime and the Danger of “Decoding”

The eventual modification of the Argentine Food Code requires legal reform, either by a new law altering the content of the Argentine Food Code or establishing new precepts without altering the Code.

However, and without prejudice to the possibility of the legislative authority to enact new regulations, article 20 of Law 18284 introduced a mechanism for permanent updating of this norm, facilitating the incorporation of industry and science advances. To this end, this provision delegated the administrative authority with the power to keep the technical normative of the Code updated, being able to resolve necessary modifications to be included in the codified text.

This legal actualization technique has provided a marked dynamism to the regulation following the contemporary concept of codification, which rejects the idea of an immovable regime and promotes constant normative adaptation (11, 17). This allows its evolution at the pace and need of each era, but always without losing internal coherence and systemic unity.

In this way, and over time, the food regime has been subject to new regulations, some produced through the actualization mechanism provided for in article 20 of the law 18284, with the administrative authority issuing resolutions substituting, deleting or adding precepts. In this sense, Guajardo (1998) identifies that in the first three decades of validity (between 1969 and 1998) the Food Code presented more than 1000 changes implemented through more than 200 modifying provisions. Updating this information, in the last two decades (1999 a 2022) more than 300 amending provisions have modified the Code.

Besides the aforementioned, there has been extensive legislative activity concerning food, with special laws being issued for certain specific aspects, as the fortification of salts (Law 17259) or flours (Law 25630), the regulation of Slaughter Establishments (Law 22375), the gluten-free products regime (Law 26588), or more recently, the Healthy Eating Promotion regime (Law 27642).

An important impact on food regulations has occurred due to the framework of the regional integration process of the Southern Common Market (MERCOSUR) initially established by Argentine, Brazil, Paraguay and Uruguay in the Treaty of Asunción of 1991, and to which Venezuela -currently suspended- and Bolivia -in the accession process- later joined. Numerous requirements on food generated within the scope of MERCOSUR have been incorporated through adjustments in the Argentine Food Code. Guajardo (1998) observed that this sector of community regulations has helped lead the unifying or harmonizing process among the different countries. Legislative action in this area of regional integration has significantly impacted the national food legislation.

This regional integration and generated regulations are important not only since, commercially, MERCOSUR increases the exchange of food products among parties while constituting a great platform for food export (18), even to other regions (4); but especially because trade governance in the 21st century is based on standards and regulations rather than on classic tariff limitations. Integration agreements provide the opportunity for developing the necessary regulatory framework (2).

Faced with the various regulatory sources currently generating food norms, *i.e.* technical adjustments to the Code, new laws on the subject and harmonization with the regional integration process, it is opportune to analyze whether practices are leading to a “decoding” or the breakdown of the unity of the Code due to the proliferation of special laws at the rate of change on the issues to be regulated (8).

Guajardo (1998) has long observed that, although the Argentine Food Code is strictly the one approved by Law 18284 and Decree 2126/71, general regulations on food are much broader, and therefore cannot be identified with the concept of Code. This implies matching the legal rules in a way that an organic and systemic whole is created.

Although, according to Guzmán Britos (1993), the decoding of a regime can occur in different ways. On the one hand, formal decoding occurs when special laws, foreign or external to the Code, alter the unity of the legislation initially found in a single normative text, generating dispersion and tension between such precepts. In this sense, Hinestrosa Forero (2014) observes that perhaps, the special legislator should be reproached for not having known or wanted to adapt the figures of the Code capable of useful application to the new demands.

Considering material decoding, modifications are introduced to the text of a Code itself, although altering the system logic that it presents (14). This is, although not every modification to the Code text implies decoding, those modifications that break rationality, harmony and coherence, denaturalizing the Code codification technique. In such cases, the Code is transformed -at least partly- into a normative index, compilation or digest of non-systematized normative precepts.

In order to analyze whether the modifications in the food regime are generating a decoding process, below we specify the impact of legal reforms focusing on the food labeling regime.

Labeling of food products

One topic in the system of the Argentine Food Code is related to “Food Labeling and Advertising Rules”, developed in Chapter V (articles 220 to 246).

The Codex Alimentarius guidelines developed by FAO and WHO define labeling as “any tag, brand, mark, pictorial or other descriptive matter, written, printed, stenciled, marked, embossed or impressed on, or attached to a container of food or food product” (10). In the regional and local regime, Resolution GMC 26/01 -dictated within the scope of MERCOSUR and incorporated into the Food Code- defines labeling as any label, inscription, image or other descriptive or graphic material, written, printed, stenciled, marked, engraved in high or low relief, adhered, superimposed or fixed to the container of the prepackaged product.

Food labeling is a fundamental tool in the communication of nutritional information, potentially influencing consumer choices and eating habits. Information should be easy to read and interpret (9).

One of the actions proposed within the Global Strategy on Diet, Physical Activity, and Health adopted by the World Health Organization in 2004 is to improve people’s ability to make informed decisions about nutrition through useful, easy and understandable labeling, promoting nutrition and health literacy (23).

In the aforementioned guidelines of Codex Alimentarius developed by FAO and WHO (1985), the name of the food, the list of ingredients, net content, identification and address of production companies, country of origin, batch identification, date and storage instructions are recommended as mandatory content in the labeling regulations. They also specify situations in which ingredients must be declared quantitatively, as well as when dealing with irradiated foods.

Within food labeling, the so-called nutritional labeling can be specified as a particularity, in which -to inform the consumer- a description of the food nutritional properties is provided. In certain regulations, these guidelines are related to the preparation and nutrient content of a product without indicating whether they are healthy products, making it necessary to interpret (16).

In this regard, various countries have adopted consumer protection policies through the implementation of front labeling laws, by which beyond the mere inclusion of the nutritional information, they seek to limit the marketing of food products with harmful components like saturated fats, added sugars, sodium or high calories (1).

Fragmentation and complexity of the food labeling regime

Beyond considering the limited regulation in labeling terms of the Argentine food regime (6), a complex and fragmented character also undermines the legislative technique of codification adopted by Law 18284.

An initial and basic approach to the regulations on food labeling was provided by Law 18284, a norm that, besides declaring the validity of the Argentine Food Code, stipulated in article 19 that labels, packaging and wrappers authorized according to said Code had to clearly and accurately express their hygienic-sanitary, bromatological and commercial conditions.

According to the text ordered by Decree 2126/71, the Argentine Food Code approved and dedicated Chapter V to the “Food Labeling and Advertising Standards”, complemented with other labeling requirements contained in the specific regime of the various products regulated by the Code. Chapter V was composed of twenty-six precepts (arts. 220 to 246). However, over time, various alterations have affected the food labeling regime either through amending regulations or through external regulations to the Code. These alterations coexist and must be applied in a complementary manner.

Thus, Chapter V has been the subject of numerous reforms through the updating administrative mechanism provided in Article 20 of Law 18284, which has replaced and/or repealed its original text, or expanded it with new articles intercalated in the original numbering as “bis”, “bis1”, “bis2”, “tris”, “quárter” and “quinto”, “sexto” and “séptimo”. In this way, none of the twenty-six original articles corresponding to the labeling regime in the ordered text by the Decree 2126/71, remain to date. Instead, twelve articles have been deleted by repeal, fourteen have a replaced text, and eight new articles have been added through reiteration (such as “bis”, “ter”, etc.) of the original numbering.

Table 1 (page 68) details modifications introduced by updating articles of the Argentine Food Code.

These modifications are not systematic, but rather respond to isolated and temporally distant interventions, with dissimilar causes, purposes and contexts during 1980, 1994, 1998, 1999, 2002, 2004, 2005, 2007, 2013, 2017, 2021 and 2022. In this way, although each modification does not alter the internal coherence of the norm altogether eventually causes a fragmentation reducing the regime to a mere juxtaposition of isolated precepts without an organic systematization.

This internal fragmentation is strengthened since, through the same modifying mechanism, said Chapter has also been expanded in content through the incorporation of various resolutions issued within the scope of MERCOSUR. These resolutions were added as part of the Code in an effort of regional legal harmonization, although without any systematization or integration among articles, annexing the full text of said community standards before the articles that make up the Chapter. This technique corresponds to a simple normative compilation but not a codification.

Thus, the labeling regime includes the Common Market Resolutions N° 26/03 (“Mercosur Technical Regulation for Packaged Foods Labeling”), N° 46/03 (“Mercosur Technical Regulation on the Nutritional Labeling of Packaged Foods”), N° 47/03 (“Mercosur Technical Regulation of Portions of Packaged Food for the Purposes of Nutritional Labeling”), N° 31/06 (on “Nutritional Labeling of Packaged Foods”), N° 36/10 (on “Conversion Factor for Calculating the Energy Value of Erythritol”), N° 40/11 (MERCOSUR Technical Regulation on “Nutritional Labeling of Non-Alcoholic Beverages Marketed in Returnable Packaging”); N° 01/12 (“MERCOSUR Technical Regulation on Complementary Nutritional Information (Nutritional Claims”).

Table 2 (page 69), details the community standards sanctioned by MERCOSUR and incorporated in the Argentine Food Code Chapter V.

By completing this regulatory framework, the legislative authority has also issued special laws that, while regulating food matters parallelly to the Code, contemplate labeling aspects for some specific products.

Although some of these special laws have been integrated into the Code through subsequent modifications (case of the labeling regime stipulated by Law 17259 for enriched salts), in other cases, such precepts are isolated, without systematization. Or even in some cases, they result antinomian, as occurs with labeling regulations of enriched flours (Law 25630 y and Decree 597/2003), labels and packaging on geographical indications and designations of origin used for the commercialization of agricultural and food origin products (Laws 25830 and 25966), whole milk powder supplied in food programs (Law 25459 and its regulations), and gluten-free products (Law 26588).

Table 1. Modifications produced in Chapter V of the Argentine Food Code.
Tabla 1. Modificaciones producidas en el Capítulo V del Código Alimentario Argentino.

Article	Status	Rule that affects it
220	Replaced	Joint Resolution SCS y SAByDR N° 26/2021
221	Replaced	Res. MS 2343, 19.4.80, Ratified by Joint Res. MSyA 149/05 y SAGPyA 683/05
222	Replaced	Res. MS 2343, 19.4.80, Ratified by Joint Res. MSyA 149/05 y SAGPyA 683/05
223	Suppressed	Repealed by Joint Res. MSyA 149/05 y SAGPyA 683/05
224	Replaced	Joint Res. MSyA 149/05 y SAGPyA 683/05
225	Replaced	Joint Res. SCS y SAGyP N° 7/2022
226	Replaced	Joint Res. SCS y SAGyP N° 7/2022
227	Replaced	Joint Res. MSyA 149/05 y SAGPyA 683/05
228	Replaced	Joint Res. MSyA 149/05 y SAGPyA 683/05
229	Replaced	Joint Res. SCS y SAByDR N° 5/2022
230	Suppressed	Repealed by Joint Res. MSyA 149/05 y SAGPyA 683/05
231	Suppressed	Repealed by Joint Res. MSyA 149/05 y SAGPyA 683/05
232	Suppressed	Repealed by Joint Res. MSyA 149/05 y SAGPyA 683/05
233	Suppressed	Repealed by Joint Res. MSyA 149/05 y SAGPyA 683/05
233 bis	Added	Res. MSyAS 659, 3.10.94, Ratified by Joint Res. MSyA 149/05 y SAGPyA 683/05
234	Suppressed	Repealed by Joint Res. MSyA 149/05 y SAGPyA 683/05
235	Replaced	Joint Res. MSyA 149/05 y SAGPyA 683/05
235 bis1	Added	Res. MSyAS N° 888, 4.11.98, Ratified by Joint Res. MSyA 149/05 y SAGPyA 683/05
235 bis2	Added	Res. MSyAS N° 005, 7.01.99, Ratified by Joint Res. MSyA 149/05 y SAGPyA 683/05
235 tris	Added	Res. MSyAS N° 005, 7.01.99, Ratified by Joint Res. MSyA 149/05 y SAGPyA 683/05
235 quárter	Added	Joint Res. SPRyRS y SAGPyA N° 2/2007 y 256/2007
235 quinto	Added	Joint Res. SPReI N° 161/2013 y SAGyP N° 213/2013
235 sexto	Added	Joint Res. SPRyRS y SAGPyA N° 136/2007 y N° 109/2007
235 séptimo	Added	Joint Res. SPReI y SAV N° 11-E/2017
236	Replaced	Joint Res. SCS y SAByDR N° 18/2021
237	Suppressed	Repealed by Joint Res. MSyA 149/05 y SAGPyA 683/05
238	Suppressed	Repealed by Joint Res. MSyA 149/05 y SAGPyA 683/05
239	Suppressed	Repealed by Joint Res. MSyA 149/05 y SAGPyA 683/05
240	Replaced	Joint Res. MSyA 149/05 y SAGPyA 683/05
241	Suppressed	Repealed by Joint Res. MSyA 149/05 y SAGPyA 683/05
242	Suppressed	Repealed by Joint Res. MSyA 149/05 y SAGPyA 683/05
243	Replaced	Joint Res. MSyA 149/05 y SAGPyA 683/05
244	Replaced	Res. 2343, 19.4.80, Ratified by Joint Res. MSyA 149/05 y SAGPyA 683/05
245	Replaced	Joint Res. MSyA 149/05 y SAGPyA 683/05
246	Suppressed	Repealed by RES. GMC N° 21/02

Table 2. MERCOSUR standards incorporated in the Argentine Food Code.
Tabla 2. Normas del MERCOSUR incorporadas al Código Alimentario Argentino.

MERCOSUR Resolution	Standards incorporated into Argentine Food Code
Common Market Group Resolution N° 26/03 "Mercosur Technical Regulation for Packaged Foods Labeling"	Joint Res. SPRyRS 149/2005 y SAGPyA 683/2005
Common Market Group Resolution N° 46/03 "Mercosur Technical Regulation on the Nutritional Labeling of Packaged Foods"	Joint Res. SPRyRS 149/2005 y SAGPyA 683/2005
Common Market Group Resolution N° 47/03- "Mercosur Technical Regulation of Portions of Packaged Food for the Purposes of Nutritional Labeling"	Joint Res. MSyA 150/2005 y SAGPyA 684/2005
Common Market Group Resolution N° 31/2006 - "Nutritional Labeling of Packaged Foods"(Resolutions Complementación GMC N° 46/03 y N° 47/03)	Joint Res. SPRyRS N° 49/2007 y SAGPyA N° 106/2007
Common Market Group Resolution N° 36/10 - "Conversion Factor for Calculating the Energy Value of Erythritol"	Joint Res. SPReI N° 12/2012 y SAGyP N° 13/2012
Common Market Group Resolution N° 40/11, Mercosur Technical Regulation on "Nutritional Labeling of Non-Alcoholic Beverages Marketed in Returnable Packaging"	Joint Res. SPReI N° 212/2012 y SAGyP N° 1197/2012

The same occurs with the legislation aimed at addressing Non-Communicable Diseases, with substantial impact on the food labeling regime. Law 26905 -and its regulatory Decree 16/17- contemplate, separately from the Food Code, that the Ministry of Health includes health warning messages on containers in which salt (sodium chloride) is marketed. Additionally, Law 27642 on Healthy Eating Promotion (also known as the Front Labeling Law), despite updates of articles 225 y 226 of the Food Code established by Joint Resolution SCS y SAGyP N° 7/2022, presents contents that exceed the codified guidelines.

Finally, certain regulations issued by regulatory authorities of other normative systems have dictated regulations on labeling that, omitting the regime stipulated in the Argentine Food Code, increase the aforementioned decoding effect. This occurs with Resolution 26/21 of the National Viticulture Institute concerning labeling of wine industry products; or with Resolution 494/01 of the National Agri-Food Health and Quality Service, labeling foods prepared with minced, ground or sliced meat, and Resolution 5-E/2018 of the same entity on marketing of bulk honey containers.

CONCLUSIONS

The Argentine Food Regime was based on the legislative technique of codification, which implies a regulatory strategy that enhances legal effectiveness, efficiency and legal security by avoiding dispersed norms without internal coherence. At the same time, codification does not necessarily imply static regulations, although its evolution must safeguard internal coherence and systemic unity.

However, based on the study of labeling regulations and modifications, it can be stated that the Argentine Food Code has three legislative action lines in tension with the codification legislative technique, affecting adoption and efficiency of the regulatory system.

On the one hand, the continuous and numerous internal modifications to the Food Code carried out individually in response to specific and independent problems, generate a clear risk for internal coherence.

This process is significantly enhanced by the notable deficiency in the legislative technique with which legal harmonizations, inherent to the regional economic integration process implemented in MERCOSUR, have been introduced into national law. In these cases, community resolutions have been attached through mere transcription, openly inconsistent with its methodology and articulation. Incorporating such texts with no conception of organic unity reduced the Code to norms without rational structure or cohesion.

A third line of the undermining process of the Code is developed through the formal decoding and enactment of various special laws and other regulations foreign to the Argentine Food Code regime, obviously affecting the normative unity of codifying.

The observed situation allows us to affirm that since the enactment of the Food Code to the present day, there has been a clear decoding normative evolution, which necessarily generates inconsistencies and ambiguities in the legislation, with the consequent negative effects on the application, compliance and understanding of the regulations in the food industry.

To counteract the observed evolution, it becomes necessary to revitalize the original legal strategy based on the codification of food matters, which implies a review and readjustment of the current legal text so that in the future it systematizes its content as a unit and regains lost internal coherence.

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