



The Consumer Voice in Europe

EU proposal for a review of Official Controls – BEUC comments

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Summary

Consumer confidence in the food chain is continuously being shaken by scandals relating to food safety, authenticity etc. The review of the official controls rules provides an opportunity to strengthen provisions to regain and maintain consumer trust.

It is clear that unannounced, independent inspection is vital to ensuring that the highest possible standards of food safety and hygiene are met. It is also evident that there is a real need for effective, targeted controls that are enforced across the food supply chain. Finally, it is essential that measures are in place to prevent, dissuade and punish those who are ready to take risks and that there is a coherent approach across Member States to inspections, reporting and penalties. This would benefit not only consumers but also the food industry itself.

On 6th May 2013, the European Commission published its proposal for a Regulation on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health, plant reproductive material and plant protection products. This Regulation lays down the rules on how Member States should carry out official controls on food i.e. how to carry out food law enforcement activities, and has been expanded to cover controls performed to verify compliance with legislation concerning measures against plant pests, rules governing the production of plant protection material and rules on animal by-products.

In general, we welcome the publication of the proposal and the positive moves taken by the Commission to address issues such as the sustainability of official controls through their financing, improved coordination between Member States, the importance of unannounced inspections and the issue of food fraud and measures outlined to dissuade, track and punish such practices. There do remain some points which we believe should be further clarified or strengthened which we address in this document.

Competent Authorities

It is fundamental that competent authorities or other authorities who have the responsibility of performing official controls or other official activities have adequate resources, are well trained and effectively and efficiently coordinate and cooperate both internally but also have the means to exchange with other competent authorities from other Member States. It is equally vital that, in addition to ensuring the impartiality, quality and consistency of controls, **the independence** of the authorities or bodies in charge of controls in addition to those actually carrying out the controls is ensured and they are free of any conflicts of interest.

Consumer confidence in the food chain is regularly being shaken by scandals relating to food safety, authenticity etc. If consumer trust in food is to be rebuilt and maintained, BEUC advocates that official inspections should be carried out by an independent body i.e. the competent authorities. This implies that, if a decision is taken to delegate specific tasks to other bodies or persons, it must be ensured that, not only do they have the skills, facilities and competences to carry out such inspections, but also that they are **independent** and free from any conflict of interest. The current proposal calls for such bodies/persons to be impartial but it must be clear that inspectors must never be employed by the ones they have to control. **The Regulation should therefore clearly state that independence is a pre-requisite for delegation** and this should be reflected in the final text. It is also important that the competent authorities and other bodies/persons are audited on a regular basis in order to ensure that they are correctly performing their duties. If there are any questions/concerns about the way inspections and/or follow up actions are being carried out by delegated bodies, competent authorities must act quickly and without delay and remove this delegation.

Unannounced independent inspection is vital to ensuring that the highest standards of food safety and hygiene are effectively implemented. Article 4 of the proposal states that official controls shall be performed without warning except where *'prior notification of the operator is necessary'*. However, the current terminology does not provide any guidance as to the types of situations which for which pre-notification should occur and can be open to interpretation. We therefore call for clarification as to what is meant by "necessary". Indeed it is our view that unannounced inspections should be the norm and official controls should only be announced under exceptional circumstances. We do not believe that audits should fall under such exceptional circumstances as a food business operator should be ready for such a visit at any time.

The proposal also states that the frequency of inspections should be carried out on the basis of the risk involved. While we agree with the risk based approach, it is important to be clear about what we mean when we discuss risk. While it may be clear that risks associated with food or feed safety are covered, it is not so evident as to whether risks related to food fraud or food standards would fall under this approach. Given the recent revelations about horsemeat being passed off for beef meat, Article 8 needs to clearly address the risk of fraudulent practices and **consumer's risk** of being misled and any financial losses they may incur.

Financing of official controls

In the current economic climate there may be a temptation to cut back on resources to save money. This has been clearly demonstrated in the steady decline in the number of public servants employed to carry out official controls in Member States such as France over the last decade¹. Such cuts have had a direct impact on the number of controls being conducted (in 2012, 739,000 inspections were conducted in 142,000 various premises (food groceries, industry etc), whereas in 2007, the number of inspections was over a million in about 180,000 premises). However, it is during times like these where the role of independent inspections becomes even more important with incentives for food fraud and poor practices even greater. It is essential that Member States maintain funding for inspections and food safety management systems and we support the proposal to charge fees to a wider range of food businesses. This would enable a sufficient number of inspectors to be on the ground to complete their duties in a timely manner. It is, however, imperative, that the mechanism for establishing fees and their collection is done in a transparent way so as to prevent any question about the independence of the authority (Article 83). Related to this, we support measures which reward food businesses for repeated good performance such as the proposal for a reduction in the flat fee. This, together with the publication of inspection results would, we believe, provide an added incentive for food business operators to perform better.

¹ Syndicat National des Inspecteurs en Sante Publique Vétérinaire, 2010.

On the fees issue, we are concerned that the exemption of micro-enterprises from fees is based purely on the size of the business and do believe that there should at least be a risk based approach for such an exclusion.

Publication of inspection results

Just as important as carrying out inspections is the publication of the results of the controls. In order to gain and maintain consumer confidence, it is important to have a transparent and consistent approach to how official controls are carried out and to make public the reports/outcomes of controls regarding food operators. Article 10.3 states that competent authorities are entitled to publish or make available information about the rating of individual operators provided criteria are objective, transparent and publicly available and consistency and transparency of the ratings process can be ensured. Having such information in the public domain would serve two purposes; it would provide consumers with information on how a food business is fairing and would therefore help them to choose where to eat out, shop for food or decide what food products to buy and it would also provide an extra incentive to food operators to perform well in order to achieve a positive rating.

If it is to be truly effective, all MS should be required to introduce rating schemes such as the smiley scheme² or scores on the door³ which are already in use in Denmark and UK respectively. Evidence from US⁴ has shown that the use of such hygiene ratings systems in Los Angeles have resulted in a drop in hospital admissions due to food poisoning. BEUC therefore believes that such schemes should be mandatory and based on a common set of harmonized criteria. Of course, in order to be truly useful, it should be stressed that transparency on all results must be a requirement. This would mean that all businesses which receive a rating would be obliged to clearly exhibit it (in a location easily accessible to the consumer) and it should not be left up to them to choose whether or not to display the results for their establishment.

Official controls

The recent horsemeat scandal clearly demonstrated that there are those working in/associated with the food sector who put profit first and are willing to take risks to maximize their takings. Article 9 of the proposal clarifies those persons, processes and activities which are subject to official controls. Given the role of brokers in the horsemeat issue, it is vital to ensure that they are also clearly covered by the Regulation and that food businesses are required to declare any brokers they use/work with. We also believe the future Regulation should include provisions for a registration system which brokers would be obliged to sign up to with only those who are accredited being permitted to work in the food area. Such an initiative would be useful for competent authorities when identifying where/on whom controls should be carried out. We believe that, if companies are obliged to

² <http://www.findsmiley.dk/en-US/Forside.htm>

³ <http://www.scoresonthedoors.org.uk/>

⁴ Simon et al. (2005). Impact of Restaurant Hygiene Grade Cards on Foodborne-Disease Hospitalisations in Los Angeles County. *Journal of Environmental Health*, 67(7), 32-36

declare the details of their brokers or suppliers, this would also help with traceability in the case of a scandal or food scare.

Article 15 sets out the rules and actions to be taken by competent authorities when it comes to the production of products from animal origin for human consumption. While the proposal lays down rules on official controls on meat production, currently no reference is made to standards issues and specific checks to ensure fraudulent activities are not taking place. Learning from the recent horsemeat issue, it is important that in the final Regulation, Article 15 is amended to include the point that a product is of the nature, quality and substance that would be expected by the final consumer.

When it comes to the area of newly identified or emerging risks (Article 24), the proposal should also reflect the importance of close co-ordination within and between competent authorities, national food agencies and the European Food Safety Authority.

Sampling, analysis, testing and diagnosis

Under the current draft, the Commission can decide, via implementing acts, rules for methods to be used, performance criteria, interpretation of results in addition to laying down procedures for the uniform application of rules. It is our view that the European Parliament should be given the opportunity to react to any new proposed rules and that the Commission's implementing powers be reserved mainly for emergency situations where there is no room for delay in taking action.

When it comes to official laboratories, it is crucial that they have the expertise required, can perform their activities in a timely manner and are **independent** and free from any conflicts of interest.

In addition to independent testing, we have seen that, as in the case of the horsemeat scandal, many food business operators also have the means to carry out their own tests on products. While independent inspection and testing is critical, Member States should have the possibility to also require food business operators carry out their own tests. We therefore ask that the text be amended to take this into account but also that Member States should also be given the power to require FBOs to disclose their results. Such data transparency could provide additional valuable information to the competent authorities where there are wider implications for the food chain and, ultimately, consumers. In this context, we fully support the provision that would allow the European Commission to require Member States carry out testing when a potential issue has been identified. This would be an efficient way of providing a clear picture as to the coverage and extent of any problem and will help identify what actions need to be taken to resolve it as quickly as possible.

Co-ordination between Member States

We are pleased to see the proposal reflect some of the key learnings from the recent horsemeat scandal. We welcome measures included to improve co-operation and co-ordination both between Member States themselves and between Member States and the Commission. Experience has shown that improvements can be made in this area to allow for a rapid exchange of intelligence and information. We welcome the provisions under Article 130 for the development of a computerized management system. However, it needs to be clarified as to how this will work and be used in practice to rapidly transfer information and intelligence (in cases of food fraud for example) between Member States. It must also be stressed that any information which is relevant for consumer health and protection is made publicly available as quickly as possible.

We support the measures laid down in Articles 106 and 111 which are designed to enable a coordinated action/approach against food fraud. We particularly welcome provisions for coordinated unannounced controls as it should keep industry on its toes and make those who may be tempted to take risks, think twice before doing so. However, when a violation does take place, it is important that the information is made public as quickly as possible and that swift and effective action is taken to penalize those operators who have decided to take risks with people's safety and/or cheated/misled consumers. It is imperative that Member States take a tough stance as they play an important role in ensuring the message that crime does not pay comes across clearly. We fully support the provisions for financial penalties as laid down in Article 136(2) and the requirement that they should at least offset any economic gains from violations. In order to be effective, it will be important that Member States have a coherent approach to financial penalties. We would therefore suggest the Commission draw up some guidelines to ensure these rules are applied consistently across EU.

End.