



Briefing

The EU Review of Official Controls

Priority issues for consumers

The European Commission has published proposals to revise the EU Official Controls legislation (Regulation 882/2004). This fundamental law sets out how food law enforcement should be carried out, including the responsibilities of Member States and the European Commission. The European Commission's objectives for the proposal are to modernise and sharpen enforcement tools and to simplify the legislative framework so that it is easier to use and more efficient. It also aims to ensure the availability of stable and appropriate resources, ensure equity and fairness in the financing of official controls and improve transparency.

Which? broadly supports the approach that is proposed, but would like to see several areas strengthened. This includes ensuring the independence of inspection; the importance of a risk-based approach that takes account of misleading practices and does not exempt businesses from requirements purely on the basis of their size; the need for unannounced inspections; stronger powers for authorities to require companies to carry out testing and disclose the results; registration of food supply chain intermediaries such as brokers; improving co-ordination between EU Member States; ensuring stronger sanctions; and enhancing the transparency of levels of business compliance for consumers.

Learning from horsemeat

The review is particularly timely following the recent horsemeat incident. A Which? UK-wide survey conducted in February 2013ⁱ, shortly after the scale of the contamination was realised, showed that it affected consumer confidence in the food industry.

More than half of consumers changed their shopping habits, with 30 per cent of consumers buying less processed meat and a quarter (24 per cent) buying fewer ready meals with meat in or choosing vegetarian options. A follow up survey in June 2013ⁱⁱ found that this had changed to 23 per cent and 17 per cent respectively with many consumers still shopping differently as a result of the incident.

The review of the Official Controls legislation provides an opportunity to address many of the weaknesses that the horsemeat incident exposed, including the need for:

- greater priority to be given to food standards, as well as food safety issues.
- better surveillance and intelligence gathering to identify potential contaminants and hazards across complex global supply chains.

Which? is a consumer champion
We work to make things better for consumers. Our advice helps them make informed decisions. **Our campaigns make people's lives fairer, simpler and safer.**
Our services and products put consumers' needs first to bring them better value.

www.which.co.uk

Which?
2 Marylebone Road, London, NW1 4DF
t 020 7770 7000 f 0207 7770 7600
www.which.co.uk



- government agencies to have adequate powers to verify food industry checks, including requiring testing and the disclosure of testing results when necessary.
- closer working between Member States on standards issues, including the need for rapid dissemination of information about potential threats.
- clear disincentives for fraud - including robust enforcement with adequate penalties.

Key issues to be addressed

1. Inspection must be independent

If consumers are to have confidence in enforcement, it is essential that the official Competent Authority within each Member States operates independently, but also that any other bodies that they delegate activities to are independent.

Title II, Chapter I (Competent Authorities) Article 4(1)(b) should therefore be strengthened so that reference to the need for 'impartiality' is changed to 'independence'.

Title II, Chapter III (Delegation of specific tasks of the competent authorities) Article 26 (1) (b) (iii) should therefore be strengthened so that it is clear that delegated bodies have to be 'independent', rather than 'impartial'. It is also important that these bodies are regularly audited to ensure that they are correctly performing their duties.

2. Extend the scope of a risk based approach

Enforcement resources should be tailored to the businesses or activities that are highest risk, particularly when local authority resources are constrained. It is important that 'risk' includes economic loss to consumers and the risk of consumers being misled, as well as harm to health.

Title II, Chapter II (Official Controls) Article 8(1) (a) states that controls should be carried out on a risk basis and with appropriate frequency, but "financial loss to consumers and their risk of being misled" is also listed along with other risks.

3. Include brokers as food businesses

The horsemeat incident revealed the many intermediaries involved at different points along the supply chain, including brokers who trade ingredients. It is essential that these businesses are also classed as food businesses and therefore subject to legal requirements.

Title II, Chapter II (Official Controls) Article 9 sets out the persons, processes and activities that are subject to official controls. It must be clear that brokers are also subject to these controls and there should be a requirement for them to register as a food business.

4. Give greater priority to food standards

It is important that sufficient resources are given to ensuring that food is of the nature and quality that consumers expect, as well as that it complies with food safety controls. It is important that this is embedded across the food supply chain.

Chapter II (Official Controls), Article 15 (1) sets out what official controls on the production of meat should include. This should also include "that the product is of the nature, quality and substance that would be expected by the end consumer and no evidence of fraudulent practices".

5. Extend the rapid alert system to standards

Many food supply chains are complex and do not respect national boundaries. It is essential that there is effective sharing of information and intelligence between Member States and a rapid alert system for standards as well as safety issues. The European Commission has proposed several mechanisms for improving working arrangements.

Title IV (Union Activities), Chapter IV (Information Management Systems), Article 130 proposes an Information Management System for Official Controls (IMSOC) which it states will enable rapid exchange of data. It is essential that this is robust and works in a similar way to the Rapid Alert System for Food and Feed (RASFF) which deals with safety.

6. Ensure fees incentivise compliance

It is essential that there is sufficient resourcing for food law enforcement. The Commission has proposed extending the collection of fees to a wider range of businesses. Different revenue streams should be explored, but care is needed that greater reliance on food industry fees does not result in additional costs for consumers or undermine the independence of inspection. If introduced, fees should be introduced in a way that incentivises compliance. Charges should reflect the relative risk of a food business and there should be no exemption based on size alone.

Title II, Chapter IV (Financing of Official Controls) Article 80 recognises that flat fees should come down if standards improve which we agree with.

Title II, Chapter IV Article 82, however, exempts small businesses from fees on the basis of size alone. It is essential that the risk posed by the business is also taken into account as small businesses can be high risk.

Title II, Chapter IV, Article 83, refers to the transparency of calculation of the fee. But it is also important that the need for the means of collecting the fee does not compromise the independence of inspection.

7. Unannounced inspections must be the norm

It is essential that food law inspections are unannounced other than in exceptional circumstances where it needs to be ensured that particular personnel are present. If inspections are announced, the officer may not gain a true reflection of normal practice.

Title II, Chapter II (Official Controls) Article 8 (4) states that official controls should be performed without prior warning, but provides two very broad exceptions to this where prior notification of the operator is necessary and where the operator has requested such official controls. The onus should be reversed so that prior warning is only given in exceptional circumstances.

8. Member States need to require testing by food businesses

The horsemeat affair highlighted weaknesses in the Competent Authority's ability (in this case the Food Standards Agency) to require industry to conduct testing and to disclose the results. Although a voluntary agreement was reached in this case, it is important that this issue is



addressed for the future. Provision is made for the European Commission to require testing by Member States, but not for Member States to require testing by food businesses.

Title II, Chapter IV (Sampling, Analysis, Testing and Diagnosis) sets out requirements for how sampling should be conducted by competent authorities. This should be strengthened (eg. a new article) by stating that Competent Authorities may require food business operators to conduct sampling, that the frequency should be developed transparently and that they can require the results to be disclosed to the Competent Authority.

Chapter IV, Article 36 prescribes how official laboratories should be designated and should also emphasise these laboratories should be independent and free from conflicts of interest.

9. Tougher sanctions are needed

It is essential that crime does not pay. Prosecutions must be taken where there are breaches to the law and tough penalties must be applied so that there is a disincentive for fraudulent, misleading and unsafe practices.

Title VII (Enforcement measures), Article 136 (Penalties), requires Member States to ensure that financial penalties applicable to intentional violations at least offset the economic advantage sought through the violation and should be strongly supported.

10. Hygiene ratings should be published

Consumers should have access to information about the standards of compliance across the food chain and how different food businesses compare. This enables informed choices and helps incentivise compliance. The UK now has a national food hygiene ratings scheme which we strongly support. Evidence from countries where schemes have been in place show that they help reduce food poisoning rates by improving hygiene standards. It should be a mandatory requirement for the scheme to be displayed by all food premises that it covers, with Member States having flexibility to agree the presentation, based on what is most understandable to consumers.

Chapter I (Competent Authorities), Article 7 (3) allows for Member States to make the outcome of official controls publicly available. This should go further and require Member States to disclose this information.

Chapter II (Official Controls), Article 10(3) also states that competent authorities are entitled to publish information about the rating of individual food companies, provided that they are objective, transparent and publicly available and that appropriate arrangements are in place to ensure the consistency and transparency of the rating process. This should be a requirement and it should also state that food businesses should provide this information to their customers.

For more information, contact Michelle Smyth (Michelle.Smyth@which.co.uk)
OCTOBER 2013

ⁱ An on-line survey of 2064 UK adults between 22-24 February 2013. Data were weighted to be representative of the population.

ⁱⁱ An on-line survey of 2028 GB adults, of which 1969 were grocery shoppers between 28-30 June 2013. Data were weighted to be representative of the GB population.