

The Proposed EU Regulation on Official Food and Feed Controls

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“Why has the UK the nasty habit of enforcing European legislation whereas other Member States don’t appear to do so”.

If I received £10 for every time a member of the UK food industry has made this comment to me I may not have become a rich man but I could certainly take my family on a good holiday. Although this comment may be an exaggeration, it is clear that enforcement of European legislation across Member States is not as uniform as it should be. As a result, the potential for uneven enforcement across Member States to produce competitive disadvantage is likely to become a much bigger issue particularly with the accession of other Member States into the European Union in the near future.

This problem has not gone unnoticed by Commissioner Byrne the European Commissioner for Health and Consumer Protection where he states “I remain convinced that Member States must play a much more active and effective role in policing the implementation of food safety legislation”. As such, a new proposed regulation on food and feed controls (with teeth) was placed before the Agricultural Council Meeting on 20 February 2003 in Brussels.

The development of a new approach to official controls is adding a “third pillar” to the Communities Food Safety Policy (I can understand the three legs to a stool analogy but this third pillar eludes me). The first pillar is an effective range of food safety legislation, the second pillar being the establishment of the European Food Safety Authority.

The proposed Regulation (115 pages) is one of the measures announced in the White Paper on Food Safety. It intends to reorganise official controls on food and feed so as to integrate controls at all stages of production and in all sectors, using “the farm to fork” principle. The basic principles relating to the responsibilities of EU Member State authorities are laid down in Regulation No. 178/2002, including the general principles of food law and establishing the European Food Safety Authority (EFSA). The Regulation on official food and feed controls describes in more detail how these basic principles shall be interpreted and implemented.

The Regulation aims:

- To improve the efficiency of Member State control services through the introduction of performance criteria for the competent authorities, a better definition of tasks, harmonisation of the role of control services and integration of controls across the entire food and feed chain (“the farm to fork” principle);**
- To improve the efficiency of the Commission control services by developing a more transparent, strategic and integrated approach to controls;**
- To define enforcement measures, including sanctions, to be imposed in the case of non-compliance with food and feed law;**
- To assist developing countries in meeting import requirements.**

The proposal provides for:

- **A harmonised EU-wide approach to the design and development of national food and feed control systems;**
- **Administrative assistance and co-operation between competent authorities in the Member States where the results of official controls require action by more than one Member State;**
- **A common approach to imports of food and feed;**
- **The inclusion of general audits of national control systems against national control plans as part of the Commission's approach to verifying the effectiveness of national control systems;**
- **The corresponding inclusion of general audits as part of the Commission approach to verifying compliance or equivalence of third country legislation and control systems with EU requirements;**
- **The provision of technical assistance to developing third countries, including training of control officials from these countries;**
- **Administrative and criminal sanctions for non-compliance with food and feed law.**

The proposal defines the obligations and duties of the competent authorities, not those of food and feed business operators. It brings into practice the principle laid down in the White Paper on Food Safety that there must be a clear distinction between the tasks of the competent authority and the food and feed operators. The proposal contains however procedures that will have an effect on food and feed business operators, in particular the procedures on food and feed imports.

The current regime for controls on the import of products of animal origin remains in place. The Regulation provides for a more systematic and harmonised approach to controls on imports of food and feed of non-animal origin from third countries. In addition, provision is made for drawing up a list of products of non-animal origin, which are known to pose particular and serious risks to human or animal health, eg the possible contamination of certain products of plant origin with aflatoxins. It is proposed that these products should be subject to stricter scrutiny and checking at the point of import, including restricting import to a list of approved border inspection posts, as is the case for products of animal origin.

For all food and feed the general principle that the product meets or is equivalent to EU standards applies. In addition, under current arrangements, in order to export products of animal origin to the EU, the country must be approved for the relevant commodity and, the products must originate in an establishment, which is approved to export to the EU. Lists are maintained at EU level of countries and establishments from which imports are permitted. Countries and establishments approved in this manner are commonly referred to as "listed". In order to be listed the third country concerned must provide guarantees that exports to the EU meet, or are equivalent to, the standards prescribed in the relevant EU legislation. There is no standardisation of the manner in which guarantees are presented. Guarantees are verified by on-the-spot-inspections by the Commission's Food and Veterinary Office. In accordance with EU rules, the FVO's inspections in third countries currently only cover the veterinary and

the feed sector. The proposed Regulation extends the FVO's role to include inspections in the food and plant health sectors.

For all food and feed, third countries will be required to present guarantees that exported products meet EU standards. These guarantees will take the form of control plans covering the relevant product sectors as well as records kept of the implementation of these controls. The control plans will be similar to the control plans and reports required from EU Member States. The control plans shall be proportionate and technically feasible taking account of the specific situation of the third country and the nature of the products exported. Guidelines will be drawn up to assist third countries in meeting these requirements. The new system should assist third countries in meeting EU standards by improving the transparency of the approval system and clarifying the requirements.

When the regulation enters into force specific import conditions for the import of food and feed may be drawn up depending on the type of product and risk associated with it. These conditions for the import of food and feed may include the establishment of lists of third countries from which food and feed may be imported. The new conditions may replace some, or all of the current import conditions. Pending the adoption of such rules current EU legislation setting down specific rules for import of food and feed will remain in force.

Administrative sanctions are already to some extent provided for in EU legislation. Veterinary legislation in particular requires for example the withdrawal of the approval number if establishments fail to comply with the food hygiene rules. Experience has shown however that the existing system of sanctions has not always been sufficient to ensure compliance. In many cases, the possibility of criminal sanctions in addition to administrative sanctions is necessary.

Two levels of sanctions are provided for in the case of non-compliance by operators:

- Administrative sanctions, such as withdrawal or suspension of an approval, destruction or withdrawal of a product from the market, restriction of the scope or scale of activities.**
- Member States are required to impose criminal sanctions where serious offences against EU food and feed law are committed intentionally or through gross negligence.**

In the case of Member States, where the Commission has proof that a control system is inadequate, it can, together with the other Member States within the Standing Committee or in serious cases on its own initiative, take special measures. These may include suspending the placing of a certain food or feed on the market as well as laying down special conditions or other interim measures to protect human, animal or plant health, animal welfare or the environment. This procedure supplements the emergency measure laid down in Article 53 of Regulation 178/2002 which can only be applied if feed or food that is likely to constitute a serious risk to human health, animal health or the environment is placed on the market.

Competent authorities in Member States will apply the administrative and criminal sanctions. The Commission will intervene with interim measures against Member States, when required, together with the Member States within the Standing Committee or in serious cases on its own initiative.

The proposal lays down that Member States must ensure that adequate financial resources are available for official controls. The means by which this requirement must be fulfilled is, as a matter of subsidiarity, left to the Member States.

If Member States impose inspection fees on food and feed business operators, they will have to respect a number of criteria so as to avoid for example excessive fees for small businesses. The proposal also lays down that if the competent authority displays non compliance, and if such non compliance leads to expenses that exceed the normal expenses for routine monitoring, these extra expenses can be charged to the food or feed business operator responsible for the non-compliance.

Whether this proposed Regulation will succeed in producing “a level playing field” remains to be seen. What is certain is that many believe that this should have been pillar 1 or pillar 2 of the Commission strategy rather than following up at the rear.

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