

Position Paper

UEAPME¹ position on 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, plant protection products and revision of the regulation 882/2004 (Official controls Regulation) COM(2013) 265

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Introduction

The objective of the EU controls regulation is the creation of a harmonious, transparent and pragmatic legal framework for activities to do with official hygiene controls under the responsibility of the member states taking into account existing rules of the regulation (EC) No 882/2004. Included is the principle of the risk orientated action as well as transparency and solidity. This revision aims to render official controls more efficient.

UEAPME agrees to the majority of proposals. However there are some specific and general concerns, too.

1. Financing of official controls (articles 76-83))
2. Publications of companies' names (articles 7 and 10)
3. Second expert opinion (article 34)
4. Link between traditional food production and SMEs
5. Evaluation
6. Delegated acts

1-Financing of official controls (articles 76-83)

UEAPME reminds that by principle a system of fees for official controls is criticised by its members.

In case a system of fees becomes however the rule UEAPME considers

- a. The exemption of micro enterprises from these fees necessary. The costs of controls would be excessive and represent an unsustainable burden compared to their business and their size.

Article 82 § 2 *“Enterprises employing fewer than 10 persons and whose annual turnover or annual balance sheet total does not exceed EUR2 million shall be exempt from the payment of the fees provided for in Article 77.”*

¹ UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is 55820581197-35.

- a. As long as no reason for controls or no negative results of these controls is found, the enterprise should remain exempt from paying any fees for the hygiene control in food and the food chain. Therefore, UEAPME believes that only in cases where the analysis confirms the violation of the rules provided under article 1, paragraph 2, an enterprise may be asked to pay the fees as this is an additional monitoring activity.

In cases where fees are to be paid for additional controls, UEAPME thinks that it is important to be aware of the different options of calculation and points out that perhaps the more appropriate method is the second one which in fact takes into account also the size of the enterprise since the calculation of the rates is related in part to the time taken to carry out the check, as this could be a determining factor for the costs among others.

- I. Article 79 provides member states with the option to choose between two different methods of calculation of costs. The first establishes a flat-rate on the basis of the overall costs of official controls borne by the competent authorities over a given period of time. The fees are mandatory for all the operators, irrespective of whether during the period of reference any control has been performed for each operator charged. However, this first method foresees a “prize” on the fee for those operators who have good past records with regard to compliance to the European food chain legislation: in fact, they will be subject less often to controls than the non-compliant operators.
- II. The second calculation method is based on the actual costs of each individual official control.

UEAPME is in favour of article 80: *Reduction of fees for consistently compliant operators*. It might be good to define the ‘price’ of the fee for those operators who have good past record (compliance to the European food chain legislation).

Furthermore, UEAPME is against the exoneration from fees of the primary production sector (as defined in article 3 (17) of regulation (EC) 178/2002), including the local processing of agricultural products.

A general concern lies in the fact that, in cases where enterprises are asked to pay for the controls, the authorities would find little incentive to cut costs. In both cases, as a result enterprises could face unbearable financial burdens.

Finally, UEAPME sees the danger of privatisation of hygiene controls which could jeopardise the neutrality of the operators of the controls. This would contradict the principle of state hygiene control as a genuine public duty.

2-Publication of company names (articles 7 and 10)

Whilst UEAPME supports transparency and information available to the public concerning the organisation and the performance of official controls in general, UEAPME does point out that the publication of controls’ results could have an irreversible negative effect on the competitiveness of the enterprise. Therefore, UEAPME would like to warn against the publishing of results of controls regarding individual operators. The added value of these results is not evident because we find that there are enough measures in place to ensure safety of consumers in the first place. However, publication of the results of the control could be provided for in very specific cases which would be much more specific than already mentioned by Regulation 882/2004, article 7 paragraph 2. They could be limited to cases of risk to human safety, or when it can be proven to seriously compromise human health for example in cases of food poisoning.

Article 7 point 3 “Paragraphs 1 and 2 shall not prevent the competent authorities from publishing or making otherwise available to the public information about the outcome of official controls regarding individual operators...”

Article 10 point 3 refers to the possibility of making the information on the “rating” available to the public, but to our knowledge the criteria for this rating have not yet been fixed. The rating if it is being put in place would carefully need to be evaluated beforehand. Moreover, UEAPME supports anonymous ratings.

Article 10 point 3: “Competent authorities shall be entitled to publish or make otherwise available to the public information about the rating of individual operators based on the outcome of official controls...”

Finally, publication of results such as described in articles 7 and 10 rise concerns with regard to data protection. On this point, UEAPME stresses that transparency has to be balanced with the privacy rules on the controlled enterprises on the basis of the principal of proportionality, relevance, adequacy and not excessive in relation to the purposes for which they are processed (Court of Justice Commission against Bavarian Lager 29 June 2010 C-28/08P, 75-79).

3-Second expert opinion (article 34)

It is sometimes important to request an advice or second expert opinion (in cases to do with official complaints and criticism). These second expert opinions could be used as discharge material. According to article 34/1/b/i UEAPME is against additional samples and wants to assure that second expert opinions can be drawn from the set of samples already available.

4- Traditional methods of food production

UEAPME welcomes article 15/4/a – *the need to facilitate the application of delegated acts in small businesses*. A considerable number of SMEs use traditional methods of food production. Article 15 (4)(b) mentions the link that exists between SMEs and the methods of production correctly. Therefore, UEAPME recommends that the treatment of “foods with traditional characteristics” as defined in article 7(1) of the extant Commission Regulation (EC) No 2074/2005 on implementing measures is kept.

5-Lack of conformity in inspection and evaluation

UEAPME notes a disparity and lack of conformity in conducting inspection and evaluation of results in countries of the European Union. The inspection is often interlinked with the person in charge of it. Consequently the enterprise depends entirely on the “goodwill” of his/her inspector to receive favorable or unfavorable reports. This should be taken into consideration when the reports are made and conclusions drawn. Comparisons of results are therefore more difficult to draw. For this reason, UEAPME believes that the evaluation should be done on the skills and training of the staff in charge of the inspection, supporting 24 and art.4 § 2 and 3. In particular, we share the idea that the staff performing the official controls should receive an adequate training and it is important to keep them up-to-date in their area of competence.

6-Delegated acts

UEAPME is concerned that many terms in the proposal for a regulation are too vague. The text contains many delegated and implementing acts, which we view with rising concern. E.g. the examination procedure (article 5 of regulation 182/2011 on implementing acts) is cited 37 times in the text, the word “delegated acts” 44 times. These acts empower the Commission to take decisions in new areas without consulting (member states and stakeholders). As the plans of the Commission are not known in advance, it is not possible to assess their consequences at the moment.

We conclude by saying that the official controls regulation could be the opportunity to improve all official food controls. This includes the controls itself as well as the services in charge of these controls. However, passing on the fees to the companies is certainly not the right way to do this.

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