

EFLA-Workshop on the revision of Regulation (EC) 882/2004 on official controls

On 1 June 2015 a workshop of the European Food Law Association (EFLA) about the planned revision of Regulation (EC) 882/2004 on official controls took place in Vienna.

First, Dr. Ulrich Herzog, Austrian Ministry of Health, gave an overview of the amendments proposed by the European Commission before presenting the national authorities' opinion on the upcoming revision. According to Dr. Herzog, the extension of the scope of Regulation (EC) 882/2004 to plant protection products and genetically modified organisms is seen critically. Furthermore, the envisaged increase in transparency of the control results should be regulated on a national level, as the traditions with regard to so-called black lists are quite different in the member states. Also data protection concerns arise which is why further discussions on this topic are needed. The strengthening of administrative assistance and cross border cooperation is considered to be a positive development. However, it is not clear who should take the leadership in Europe-wide food fraud cases. More generally, a horizontal coordination concerning the regulation of official controls and a discussion about the future structure of food control on the European level are missing. Currently, a lot of technical details are defined by experts instead of setting the strategic outlines of feed and food control as a first step.

After this outline of the authority's perspective Mag. Katharina Koßdorff and Dr. Florian Tschandl from the Food Industries Association of Austria pointed out some of the major negative impacts of the planned revision on the food industry. At present, the member states are free to decide whether the controls are financed through general taxation or by fees or charges. It is envisaged that in the future, official controls shall solely be financed via mandatory fees. As a result, food business operators will be obliged to pay for regular official controls even if they fully comply with the food regulations. In this regard it has to be kept in mind that food business operators already bear enormous costs just to guarantee that their products are safe, e.g. for self-control-systems, industry certificates and/or audits. Furthermore, it may also contradict the consumers' trust in controls if these are financed by the industry. Therefore, the current flexible approach that leaves the decision how to finance the controls up to the member states should be kept.

From the food industry's point of view also the intentions to increase transparency are highly questionable. According to the Commission's proposal, competent authorities shall be entitled to publish information about the outcome of official controls regarding individual operators and about their rating based on the outcome of official controls. It was criticized that the negative effects on the reputation of the concerned food business operator may be serious, whereas no significant positive impacts on public health can be expected from such "naming and shaming" of companies. Moreover, information once published in the internet cannot be removed effectively any more.

Subsequent to the presentations a discussion among the workshop participants, coming amongst others from Germany, Spain, UK, Turkey and Austria, took place. Especially the planned "transparency"-provisions were viewed critically. Upon other aspects it was ques-

tioned whether public "naming and shaming" is in line with the European principle of proportionality as numerous effective instruments are already in place in order to sanction violations of food law. Moreover, common criteria determining in which cases the authorities may publish which information are missing.

With regard to the new financing structure concerns were raised that the administrative efforts needed to put the mandatory fee system into effect would increase significantly. At least in Austria these costs will not be covered by the revenues resulting from the controls because the exemptions for small enterprises proposed in the Commission's draft widely apply due to the structure of the Austrian food industry. It is therefore questionable whether the new financing system will function at all.

The workshop participants also discussed that there are no specific contact persons in the member states with whom the national authorities may get in touch if necessary. Especially in case of food frauds single contact points in the member states would facilitate and enhance cross-national cooperation as well as coordination. However, in some member states the implementation of one single contact point is not possible due to constitutional requirements. In Germany, for example, the control of the food business operators is a competence of the "Länder" (federal states). As a consequence about 400 local authorities are in charge with food law and safety. In this context it was also debated that the harmonized European rules are interpreted differently by the national authorities, which in practice is one of the main problems for food business operators. Hence there is a need for better training and education of the control bodies that enforce the food law. Furthermore, the cooperation between the national authorities throughout the whole food chain should be intensified.

Several issues criticized by the workshop participants have also been raised by the European Parliament in its position at first reading from April 2014 on the Commission's proposal. Currently the Council's position is awaited. It remains to be seen when an agreement on the future structure of official control of the feed and food chain will be reached in the legislative process.

Andreas Natterer / Eva Maria Kostenzer