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FINAL REPORT OF AN AUDIT

CARRIED OUT IN

HUNGARY

FROM 25 MARCH TO 01 APRIL 2014

IN ORDER TO EVALUATE THE NATIONAL PROCEDURES IN PLACE TO VERIFY THE
EFFECTIVENESS OF THE IMPORT CONTROL SYSTEM

In response to information provided by the Competent Authority, any factual error noted in the draft report has been corrected; any clarification appears in the form of a footnote.

Executive Summary

This report describes the outcome of an audit carried out by the Food and Veterinary Office (FVO) in Hungary from 25 March to 1 April 2014 to assess how the competent authorities evaluate the performance and effectiveness of their system of official import controls (regarding live animals and products of animal origin).

The report concludes that the Hungarian authority is developing the activities for verification of effectiveness of the official import controls including the setting of relevant objectives and indicators to measure the extent to which these objectives are met.

The verification activities do not ensure compliance of the official import controls with EU legislation. This is due to the lack of implementation of verification in some border inspection posts (BIPs) for a long period of time. The competent authority has not considered the risk of absence of verification of the official import controls and has not planned such activities for a period of two years. The above undermine the verification of effectiveness of the official import controls as required by article 8 of Regulation (EC) No 882/2004/EC.

The results of the verification activities are foreseen to be used for planning of the official controls and also on planning future verification activities. Activities like performance assessment of personnel, national database (EVIR) to monitor the output of the audits are potential tools to assess effectiveness of the official import controls, not currently used as such. In addition, process and performance audits as foreseen in the new Quality management procedure can be a means of assessment of the appropriateness and effectiveness of the official import controls.

The report includes a recommendation to the competent authority related to the verification activities.

Table of Contents

1	<u>INTRODUCTION</u>	1
2	<u>OBJECTIVES</u>	1
3	<u>LEGAL BASIS</u>	2
4	<u>BACKGROUND</u>	2
5	<u>FINDINGS AND CONCLUSIONS</u>	2
5.1	<u>PLANNING OF THE VERIFICATION ACTIVITIES</u>	2
5.2	<u>IMPLEMENTATION OF THE VERIFICATION ACTIVITIES</u>	4
5.2.1	<u>SYSTEM TO ENSURE PRESENTATION OF CONSIGNMENTS FOR VETERINARY CHECKS</u>	5
5.2.2	<u>VETERINARY CHECKS</u>	5
5.2.3	<u>CONTROLS OF TRANSIT/NON-EU COMPLYING CONSIGNMENTS</u>	6
5.3	<u>IMPACT OF THE VERIFICATION PROCEDURES</u>	7
6	<u>OVERALL CONCLUSIONS</u>	8
7	<u>CLOSING MEETING</u>	9
8	<u>RECOMMENDATIONS</u>	9
	<u>ANNEX 1 - LEGAL REFERENCES</u>	10
	<u>ANNEX 2 SUMMARY OF THE LEGAL REQUIREMENTS</u>	11

ABBREVIATIONS AND DEFINITIONS USED IN THIS REPORT

Abbreviation	Explanation
BIP	Border Inspection Post as defined in Council Directives 97/78/EC and 91/496/EEC
CGO	County Governmental Offices
CN code	The goods nomenclature code as laid down by Annex 1 to Council Regulation (EEC) No 2658/87 (i.e. the Combined Nomenclature)
Customs	National Tax and Customs Office
CVED	Common veterinary entry document for products of animal origin as laid down in Annex III to Commission Regulation (EC) No 136/2004 and for live animals as laid down in Annex I to Commission Regulation (EC) No 282/2004.
EU	European Union
FVO	Food and Veterinary Office
LVU	Local Veterinary Office
MRD	Ministry of Rural Development
NFCSSO-DAHAW-LATSTD	National Food Chain Safety Office - Directorate for Animal Health and Animal Welfare - Live Animal Trade Supervisory and Traceability Department
SMSD	Directorate for System Management and Supervision
TRACES	Trade Control and Expert System introduced by Commission Decision 2004/292/EC

1 INTRODUCTION

This audit took place in Hungary from 25 March to 1 April 2014 as a part of the Food and Veterinary Office's (FVO) audit programme. The audit team comprised three auditors and was accompanied throughout the audit by representatives from the competent authority, the National Food Chain Safety Office - Directorate for Animal Health and Animal Welfare - Live Animal Trade Supervisory and Traceability Department (NFCSO-DAHAW-LATSTD).

An opening meeting was held on 25 March 2014 with representatives of the Ministry of Rural Development (MRD), LATSTD, NFCSO's Supervision and System Management Directorate (SMSD) County Governmental Offices (CGO) and the National Tax and Customs Office (Customs). At this meeting, the objectives of, and itinerary for the audit were confirmed. Additional information required for the satisfactory completion of the audit was provided by the different competent authorities.

2 OBJECTIVES

The objective of the audit was to assess the measures in place in order to verify compliance with planned arrangements and ensure that their official import control system is appropriate and effective.

Regarding the scope, the audit covered:

- The objectives set by the national system for import/transit controls of live animals and products of animal origin at different levels and different authorities, and their relation with the objectives of the relevant EU legislation.
- The competent authorities involved. This involved examining the allocation of responsibilities, coordination between different authorities, services and/or departments, procedures for monitoring and reporting and corrective and preventive actions taken where shortcomings were identified in the implementation of the official import controls.
- The official import controls carried out at the border inspection posts (BIPs) and the procedures in place to ensure that controls are implemented as expected (verification of compliance with planned arrangements).
- The monitoring or measurement of the performance of the official import controls and how the results of this monitoring are used to assess the achievement of the objectives (verification of effectiveness).
- The use of results for future planning and improvement of the import control system.

The table below lists the sites visited and the meetings held in order to achieve the above objective.

Location	Competent authority	Comments
Headquarters Budapest	LATSTD, SMSD, MRD, CGO, Customs	Opening and closing meetings
BIPs (Roszke, Budapest)	LATSTD, CGO	Verification of official import controls
Headquarters Budapest	NFCSO DAHAW-(LATSTD, SMSD)	Technical meeting

3 LEGAL BASIS

The audit was carried out under the general provisions of EU legislation and, in particular Article 45 of Regulation (EC) No 882/2004 of the European Parliament and of the Council.

Annex 1 comprises a list of legislation as audit criteria for this report. Legal acts quoted in this report refer, where applicable, to the last amended version.

Annex 2 provides a summary of the main requirements of the legislation and the standards used during the audit.

4 BACKGROUND

During 2013, the five approved BIPs in Hungary issued 223 common veterinary entry documents for animals (CVEDAs) and 2,716 common veterinary entry documents for products of animal origin (CVEDPs). There is one warehouse approved under Article 12 of Council Directive 97/78/EC for the temporary storage of products of animal origin which do not comply with the EU public health requirements. It is under the responsibility of the local veterinary unit (LVU).

The structure of the competent authorities and the allocation of responsibilities are described in the Hungarian country profile cited in DG SANCO webpage:

http://ec.europa.eu/food/fvo/last5_en.cfm?co_id=HU

FVO has evaluated the import/transit control system and BIPs in Hungary in a 2008 audit, DG(SANCO) 2008-7754. Another audit conducted in 2010 evaluated import controls not carried out at BIPs and specific issues at selected BIPs (DG(SANCO) 2010-8562)).

5 FINDINGS AND CONCLUSIONS

5.1 PLANNING OF THE VERIFICATION ACTIVITIES

Legal requirements

Regulation (EC) No 882/2004, Commission Decision 2006/677.

Findings

1. The LATSTD in the Directorate for Animal Health and Animal Welfare (DAHAW) in the NFCSO is responsible for defining policy, coordinating the controls, issuing instructions and monitoring the activity of the BIPs. The Supervision and System Management Directorate (SMSD) in the NFCSO is responsible for the verification of control activities in the NFCSO.
2. The verification activities of SMSD are certified since July 2013 by an independent body under the requirements of ISO 9001:2008 in accordance with ISO 19011:2011 standard (Guidelines for auditing management systems). The SMSD has drafted a Quality management procedure (ME 7-1), under the ISO certified scheme, that foresees supervision activities of the departments, the so-called "technical audit". This is defined as the

supervision of the regional activities from the central level. The procedure also describes internal audits. ME 7-1 describes that technical audits can be:

- process audits (assessing of an activity),
- compliance audits

ME 7-1 describes that internal audits can be:

- process audits (assessing of an activity),
- compliance audits,
- performance audits (assessing performance towards set objectives),
- system audits

3. The main objective of the verification activities of the official import controls is to assess compliance with legal requirements and planned arrangements (i.e. BIPs manual and related instructions). The audit team noted that process and performance audits (finding 2) are tools that the competent authority foresees to verify the appropriateness and the effectiveness of the official import controls in line with Articles 4(2)(a) and 8(3) of Regulation (EC) No 882/2004.
4. The competent authority plans on an annual basis the verification (audit or supervision) activities. On this, the SMSD uses the priorities set by top management, the previous issues relating to each sector and the input from the sector coordinators. The competent authority plans a 5 year cycle for both audit and supervision. According to this the official import control system shall have at least one audit and one supervision during the 5-year period. There have been no such verification activities conducted since 2012 and none is planned for 2014.
5. The SMSD provides a template that each department needs to fill in the verification objectives and criteria and develop their own check list. The LATSTD has the same check list for audit and supervision from central level. The check list covers relevant legal requirements and planned arrangements and cooperation and coordination with Customs, contingency plans, BIPs' facilities and equipment (this includes the cleaning and disinfection of facilities), efficiency and competence of relevant staff, availability of documented procedures and keeping of procedures up to date. The check list has a scoring system for the performance of the auditee. This checklist was last used in 2012 (see finding 14). The competent authority did not evaluate the results of the score. The audit team noted that this measurement would be a good practice in measuring the extent of compliance of the BIPs towards the legal requirements and planned arrangements.
6. The verification activities cover the activities of the approved warehouse under Article 12 of Directive 97/78/EC but do not cover the activities of Customs warehouses. The area is also not covered by the Customs verification activities.
7. In the past audits on the BIPs, officials from the LATSTD joined the audit teams as technical experts in order to facilitate effective assessment of the official import controls and ensured independence of the audit function in line with Decision 2006/677/EC.

8. The SMSD stated that various FVO audit reports recommendations in different departments highlighted the need to develop a new procedure for the verification of effectiveness and appropriateness of the official controls of different sectors in line with Articles 4(2)(a) and 8(3) of Regulation (EC) No 882/2004. The SMSD held a meeting with the sectors to provide guidance on the development of the new procedure, in January 2014. The SMSD sent an email providing guidance on the development of the procedure. This includes a SWOT analysis (analysis of strengths, weaknesses, opportunities and threats) of the official controls and the setting of measurable objectives and criteria related to them. The NFCSO departments should provide the results of this analysis to the SMSD by 14 March, 2014 and after that, a meeting would address any issues and finalise the procedure. Regarding the official import controls, at the time of the audit this development was in progress.
9. The certified system (finding 2) includes verification of effectiveness of the audit activities (which also include the central level supervision). After the ISO certification no verification according the new procedure (finding 2) has been followed on the official import controls.
10. No verification of effectiveness of the official import controls by following the new verification procedures was available at the time of the audit.
11. The competent authority conducts an annual assessment of personnel performance. This assessment covers awareness of personnel and performance of their tasks. It has a scoring system but no procedure and criteria define what to assess (relating to the official import controls), and how. There is no criteria to calculate the score. The competent authority stated that the head of the BIP is following his perception and knowledge to comment on the performance of the official veterinarians and he is not using a procedure and criteria. The audit team noted that this assessment can support the verification of effectiveness but the competent authority commented that currently they do not use the personnel performance assessment for the verification of effectiveness of the official import controls.
12. The BIPs can follow their own verification procedures. There is no interaction with the central level either on the development of the procedures or the use of the results of these. The shortcomings identified on the local supervision are passed to the relevant CGO when there is a need of financial resources approval for the rectification.

Conclusions on planning of the verification activities

13. The competent authority is developing the activities for verification of effectiveness of the official import controls including objectives and indicators. The competent authority has not planned to implement such verification activities since 2012 leading to an absence of the evaluation of effectiveness and appropriateness of the official import controls and their compliance with EU legislation.

5.2 IMPLEMENTATION OF THE VERIFICATION ACTIVITIES

Legal requirements

Council Directive 91/496/EEC, Council Directive 97/78/EC, Directive 2002/99/EC, Commission Regulation (EC) No 136/2004, Commission Regulation (EC) No 282/2004, Commission Decision 2001/812/EC, Commission Decision 2004/292/EC.

Findings

14. The competent authority has last audited in 2011, one of the BIPs' visited by the audit team. Both BIPs visited underwent their most recent supervision from the central level in 2010. Apart from these, the competent authority conducted a supervision on the approved warehouse under Article 12 of Directive 97/78/EC in 2010. All other BIPs last underwent a supervision either in 2010 or in 2012.
15. There is no head of the BIP in Budapest airport since 2011. No verification (central nor local) activities were followed on this BIP for this period of time. The competent authority issued a decision in March 2014 to have the former head of the BIP once per week to supervise the BIP activities.
16. No verification has been conducted on the activities of the official import controls sector at central level (LATSTD).
17. No results of the official food inspections in the Hungarian market relating to imported food of animal origin has been communicated to the import sector. The competent authority commented that there is no requirement to investigate the existence of illegal imported commodities of animal origin in the internal market.

5.2.1 System to ensure presentation of consignments for veterinary checks

18. A NFCSO-Customs cooperation agreement signed in November 2012 specifies that both parties (BIPs and Customs) shall act in accordance with articles 6 and 7 of Regulation 136/2004. In addition there are local agreements in the BIPs that specify the meetings and the cooperation. The way to conduct the cross-checks is left to each BIP and no documented procedure exists. In both BIPs there is a cross-check with data available from the Customs, in order to verify that no import of a consignment violates the requirements of Article 4 (1) of Directive 91/496/EEC and Article 3 of Directive 97/78/EC. Regarding pre-notifications, these are done correctly in most of cases.
19. One of the BIPs visited issues a report stating the number of manifests checked and the result of these checks, while the other BIP issues a report stating that the result of checks was satisfactory (no shortcomings identified in a sample of six months over 2012 and 2013).
20. In the two BIPs visited the supervision from central level covered the cross-checks with Customs available data. In another BIP (Kelebia) the supervision identified the need for an update of local agreement with the Customs and recommended that the BIP address this shortcoming.

21. The competent authority does not conduct verification relating to official controls of consignments subject to veterinary inspection in customs warehouses (finding 6). However, the Customs have notified at least in two cases the competent authority regarding consignments subject to veterinary controls that had not been checked in a BIP, and which were found in customs warehouses during clearance procedure. The competent authority stated that those consignments were brought back to a BIP for veterinary inspection.

5.2.2 *Veterinary checks*

22. In BIP Roszke there is no unloading of the consignment from the container to conduct a full physical check and take samples for laboratory testing, when the consignment has heavy packages (e.g. barrels of honey). In the case of taking of samples these are taken from the accessible part of the truck i.e. near the door of the vehicle. In addition in such a case (of heavy packages) the inspector is making the physical check and the sampling on the truck and no package is carried to the inspection room. This practice does not guarantee taking of samples that are representative of the load contrary to the requirements of Annex III to Directive 97/78/EC. The audit team noted that in the case that there is a need for weighing a heavy package (e.g. a barrel), this is not feasible as the manual forklift cannot mount the scale (the scale is placed on a construction over the floor with no ramp attached to it).

23. Regarding sampling in the same BIP, while the BIP manual describes correctly the requirements in line with Annex III to Directive 97/78/EC this is not followed. The available working copy of the BIP manual was an outdated version issued in June 2012. The valid version issued in December 2013 has more details on sampling. These shortcomings were not identified by the local supervision.

24. The head of the BIP Roszke stated that he conducts an informal supervision every two weeks on documentary checks, physical checks, sampling, facilities. Once per month he picks files of imported consignments and he assesses the correctness of the controls. He stated that he also checks TRACES on a weekly basis. The audit team noted that there is no written instruction for the supervision and the results of the supervision are not documented, which makes the statement not verifiable.

25. The head of the BIP Roszke has informed the regional government office of the damage on the wall in the boxes for keeping horses. The CGO considered it essential to total refurbish the rooms for horses since the material of the walls not durable and could totally be destroyed by the animals. No corrective action was implemented (due to financial restrictions). The CGO decided to use the remaining two rooms even with the risk of damage again by the animals and possible injury to the animals. This issue is outstanding for two years, not fulfilling the requirements of Annex A of Directive 91/496/EEC. The LATSTD was not aware of the issue.

26. The head of the BIP Roszke conducts a monthly meeting with the inspectors in which among others, he stated that he is providing feedback on the errors he identifies in the official controls. The audit team assessed the notes and the agenda of three meetings selected by the head of the BIP and these had no information on deficiencies identified during supervision activities.

27. The competent authority has started carrying out random verification of the correct use of TRACES since December 2013 using the TRACES tools data warehouse and QlikView, e.g.

checking the rate of confirmation of receipt at destination for channelled consignments. A communication with the BIPs follows this assessment in order to inform BIPs on the shortcomings identified.

28. The audit team noted some shortcomings in the facilities that were not identified by the verification activities of the competent authority. In both BIPs there were rodenticide baits in the unloading area and the human consumption storage areas putting a risk of cross-contamination to the consignments handled in this BIP. In BIP Budapest airport there were also rodenticide baits in the animal holding areas putting a risk of poisoning of the animals held in this BIP. Furthermore, in this BIP the shower was located away from the changing room making it difficult to be effectively used as a barrier to transmitting an animal disease when needed.

5.2.3 Controls of transit/non-EU complying consignments

29. The BIP Budapest issued two CVEDs which indicated that the consignments were intended for transshipment when the consignments were actually intended for free circulation (October and December 2013). The initial error was caused by the economic operator completing part 1 of the CVED incorrectly but this was not detected by BIP staff who indicated that the consignment was for transshipment on part II of the issued CVED. Customs also did not detect this error and released the consignment for free circulation.
30. The staff responsible for the article 12 warehouse issued CVEDs that did not include in box 24 the cross-reference number to previous CVED contrary to the requirement of Article 1(6) of Commission Decision 2000/571/EC, therefore the traceability of these consignments in TRACES was lost. The shortcomings described in findings 29 and 30 were not identified by the verification activities of the competent authority.

Conclusions on implementation of the verification activities

31. The verification activities were not implemented for the last two years, which means that the competent authority cannot ensure the effectiveness and appropriateness of the official import controls and their compliance with EU legislation.

5.3 IMPACT OF THE VERIFICATION PROCEDURES

Legal requirements

Regulation (EC) No 882/2004.

Findings

32. The output of the verification activities of the entire national system for official controls is recorded in a national database named EVIR. The SMSD monitors all related findings, recommendations and action plans for both audits and central supervision through this. No available data existed on the database at the time of the audit relating to the official import controls as no audits or central supervision activities have been followed for the last two years on this sector.

33. An annual report follows the verification activities of the NFCSO. The SMSD and the management of NFCSO are using this report to set priorities and directions in the planning of the official controls and also the planning of the verification activities. However, as no verification activities were followed for the LATSTD since 2012, there was no input and impact of this reporting to the official import controls for the last two years.
34. The BIPs provide reports of the official import controls they conduct on a monthly, quarterly and annual basis to the central level. These include figures of imports. Currently the competent authority does not use this information to verify the effectiveness of the official import controls
35. Regarding finding 20, the shortcoming identified was adequately addressed by the competent authority in line with the requirement of Article 8(3)(b) of Regulation (EC) No 882/2004.
36. The internal audit referred to in finding 14, identified some shortcomings and recommended to have available all relevant documented procedures and to keep staff up-to-date on their tasks. However, the audit report indicated that no action plan was required. There was no follow-up on the recommendations and no corrective actions were implemented contrary to the requirement of Article 8(3)(b) of Regulation (EC) No 882/2004.
37. Personnel performance assessment (finding 11) leads to the setting of goals for the staff for the following year. However, as described in finding 11, there are no specific criteria for the assessment of the performance on official import controls. The competent authority stated that this assessment focuses mainly on the administrative aspects of the official's performance and the issues related to the technical nature of the official import controls are not thoroughly examined.

Conclusions on the impact of the verification procedures

38. The organisation of the verification activities foresees the use of the results of verification for planning and improving the official controls and also the future verification activities. However, in the area of the official import controls this has not been done for the last two years.

Regarding verification activities conducted until 2012, improvements in the performance of the import controls were evident, however there were cases in which shortcomings were not addressed meaning that the verification activities did not ensure the effectiveness and appropriateness of the official import controls and their compliance with EU legislation.

6 OVERALL CONCLUSIONS

The competent authority is developing the activities for verification of effectiveness of the official import controls including the setting of the objectives and indicators to measure the extent to which these objectives are met.

The verification activities do not ensure compliance of the official import controls with EU legislation. This is due to the lack of implementation of verification in some BIPs for a long period of time. The competent authority has not considered the risk of absence of verification of the official import controls and has not planned such activities for a period of two years. The above undermine the verification of effectiveness of the official import controls as required by article 8 of Regulation (EC) No 882/2004/.

The results of the verification activities are foreseen to be used for planning of the official controls and also on planning future verification activities. Activities like performance assessment of personnel, national database (EVIR) to monitor the output of the audits are potential tools to assess effectiveness of the official import controls, not currently used as such. In addition, process and performance audits as foreseen in the new Quality management procedure can be a means of assessment of the appropriateness and effectiveness of the official import controls.

7 CLOSING MEETING

A closing meeting was held on 1 April 2014 with representatives from the NFCSO, the County Governmental Offices (CGO), the Ministry of Rural Development (MRD) and the National Tax and Customs Office. At this meeting, the main findings and the preliminary conclusions of the audit were presented by the audit team. The competent authority did not express disagreement with the findings and conclusions presented.

8 RECOMMENDATIONS

The competent authority are invited to provide the details on actions taken and planned, aimed at addressing the recommendation set out below, within 25 working days of receipt of this audit report.

N°.	Recommendation
1.	To immediately put activities in place to ensure the effectiveness and the appropriateness of the official import controls. Recommendation based on conclusions 13, 31 and 38. Associated findings: 8, 9, 10, 14, 15, 16, 21 ,24, 26, 33, 34 and 36.

The competent authority's response to the recommendations can be found at:

http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_inspection_ref=2014-7008

ANNEX 1 - LEGAL REFERENCES

Legal Reference	Official Journal	Title
Reg. 882/2004	OJ L 165, 30.4.2004, p. 1, Corrected and re-published in OJ L 191, 28.5.2004, p. 1	Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules
Reg. 136/2004	OJ L 21, 28.1.2004, p. 11-23	Commission Regulation (EC) No 136/2004 of 22 January 2004 laying down procedures for veterinary checks at Community border inspection posts on products imported from third countries
Reg. 282/2004	OJ L 49, 19.2.2004, p. 11-24	Commission Regulation (EC) No 282/2004 of 18 February 2004 introducing a document for the declaration of, and veterinary checks on, animals from third countries entering the Community
Dec. 2006/677/EC	OJ L 278, 10.10.2006, p. 15-23	2006/677/EC: Commission Decision of 29 September 2006 setting out the guidelines laying down criteria for the conduct of audits under Regulation (EC) No 882/2004 of the European Parliament and of the Council on official controls to verify compliance with feed and food law, animal health and animal welfare rules
Dec. 2001/812/EC	OJ L 306, 23.11.2001, p. 28-33	2001/812/EC: Commission Decision of 21 November 2001 laying down the requirements for the approval of border inspection posts responsible for veterinary checks on products introduced into the Community from third countries
Dec. 2004/292/EC	OJ L 94, 31.3.2004, p. 63-64	2004/292/EC: Commission Decision of 30 March 2004 on the introduction of the Traces system and amending Decision 92/486/EEC
Dir. 91/496/EEC	OJ L 268, 24.9.1991, p. 56-68	Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC

Legal Reference	Official Journal	Title
Dir. 97/78/EC	OJ L 24, 30.1.1998, p. 9-30	Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries

ANNEX 2 SUMMARY OF THE LEGAL REQUIREMENTS

For the purpose of these audits, effectiveness is considered the capability of producing an (intended) effect or of achieving an objective. In this particular context, it is the capability of a competent authority to achieve the objectives of Regulation (EC) No 882/2004. It is different from efficiency, which is normally used when we want to refer to input-output ratio i.e. cost and/or resources required to produce an output.

Regulation (EC) No 882/2004 lays down general rules for the performance of official controls, including operational criteria for the competent authorities. Within those rules, Article 4(2)(a) of this Regulation states that competent authorities shall ensure the effectiveness and appropriateness of official controls on live animals, feed and food at all stages of production, processing and distribution, and on the use of feed.

In particular, Article 8(3) requires competent authorities to have procedures in place to verify the effectiveness of official controls that they carry out; and to ensure that corrective action is taken when needed and that the documentation referred to in paragraph 1 is updated when needed.

Article 4(6) requires competent authorities to carry out internal audits or to have external audits carried out, and shall take appropriate measures in the light of their results, to ensure that they are achieving the objectives of this Regulation.

Other provisions establishing requirements relevant for this audit are (but not limited to) risk-based controls (Art. 3), coordination and cooperation between competent authorities (Article 4(3) and 4(5)), documented procedures for carrying out official controls (Article 8(1)); the multi-annual control plan shall contain strategic objectives (Article 42(2)), multi-annual controls plans may be adjusted during their implementation. Amendments may be made in the light of, or in order to take account of, factors including the results of Member States official controls and the results of EU controls (Article 42(3)).