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FINAL REPORT OF AN AUDIT  
CARRIED OUT IN  
AUSTRIA  
FROM 06 TO 10 JUNE 2011  
IN ORDER TO EVALUATE CONTROLS OF PESTICIDES IN FOOD OF PLANT ORIGIN

***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 a Food and Veterinary Office (FVO) audit in Austria, carried out from 06 to 10 June 2011, under the provisions of Regulation (EC) No 882/2004 on official food and feed controls.

The objective of the audit was to evaluate the control systems for pesticide residues in foodstuffs of plant origin.

Competent authorities (CAs) and their responsibilities are clearly defined. Legal requirements are in place for sanctions to be imposed and enforcement measures to be taken in the case of non-compliances identified in the areas of plant protection products (PPPs) and pesticide residues. However, no clear evidence was provided that sanctions applied are effective, proportionate and dissuasive as laid down in Article 55 of Regulation (EC) No 882/2004. Although an internal audit system is in place in the food sector, official controls on the use of PPPs are not within the audit scope so as to ensure full compliance with the requirements of Article 4 (6) of the same Regulation.

Comprehensive controls take place on the use of PPPs. However, inspections at growers are performed with prior warning which is not in compliance with the requirements of Article 3 (2) of Regulation (EC) No 882/2004.

Official controls on pesticide residues are performed in accordance with the existing annual control programmes. Although a multi-annual control programme has been established, its content is not fully in compliance with the requirements of Article 30 of Regulation (EC) No 396/2005. A broad analytical scope is in place in the official laboratory for pesticide residues in Innsbruck where all samples under the national and EU co-ordinated control programme are analyzed. Currently, the analytical scope covered in the second official laboratory in Vienna does not allow analyzing of all pesticides listed in Annex I to Regulation (EC) No 915/2010 and the full range of pesticides authorized for placing on the market and use in the country.

The report makes a number of recommendations to the competent authorities, aimed at rectifying the shortcomings identified and enhancing the implementation of control measures.

# Table of Contents

<b>1</b>	<b><u>INTRODUCTION</u></b> .....	<b>1</b>
<b>2</b>	<b><u>OBJECTIVES AND SCOPE</u></b> .....	<b>1</b>
<b>3</b>	<b><u>LEGAL BASIS AND STANDARDS</u></b> .....	<b>2</b>
	3.1 <u>LEGAL BASIS</u> .....	2
	3.2 <u>STANDARDS</u> .....	2
<b>4</b>	<b><u>BACKGROUND</u></b> .....	<b>3</b>
	4.1 <u>MISSION SERIES</u> .....	3
	4.2 <u>COUNTRY PROFILE</u> .....	3
<b>5</b>	<b><u>FINDINGS AND CONCLUSIONS</u></b> .....	<b>4</b>
	5.1 <u>RELEVANT NATIONAL LEGISLATION</u> .....	4
	5.2 <u>ORGANISATION AND IMPLEMENTATION OF OFFICIAL CONTROLS</u> .....	5
	5.2.1 <u>DESIGNATION OF COMPETENT AUTHORITIES</u> .....	5
	5.2.2 <u>RESOURCES FOR PERFORMANCE CONTROLS</u> .....	6
	5.2.3 <u>CONTROLS ON THE USE OF PLANT PROTECTION PRODUCTS</u> .....	8
	5.2.4 <u>CONTROL PROGRAMMES FOR PESTICIDE RESIDUES</u> .....	10
	5.2.5 <u>PRIORITISATION OF OFFICIAL CONTROLS</u> .....	11
	5.2.6 <u>SAMPLING</u> .....	12
	5.2.7 <u>LABORATORY PERFORMANCE</u> .....	13
	5.2.8 <u>PROCEDURES FOR PERFORMANCE AND REPORTING OF CONTROL ACTIVITIES</u> .....	15
	5.2.9 <u>CO-ORDINATION AND CO-OPERATION BETWEEN AND WITHIN COMPETENT AUTHORITIES</u> .....	17
	5.2.10 <u>ENFORCEMENT MEASURES</u> .....	18
	5.2.11 <u>VERIFICATION PROCEDURES AND AUDIT</u> .....	19
	5.3 <u>RAPID ALERT SYSTEM FOR FOOD AND FEED</u> .....	20
<b>6</b>	<b><u>OVERALL CONCLUSION</u></b> .....	<b>21</b>
<b>7</b>	<b><u>CLOSING MEETING</u></b> .....	<b>22</b>
<b>8</b>	<b><u>RECOMMENDATIONS</u></b> .....	<b>22</b>
	<b><u>ANNEX 1 - LEGAL REFERENCES</u></b> .....	<b>24</b>
	<b><u>ANNEX 2 – STANDARDS QUOTED IN THE REPORT</u></b> .....	<b>26</b>

## ABBREVIATIONS AND DEFINITIONS USED IN THIS REPORT

<b>Abbreviation</b>	<b>Explanation</b>
AGES	Agency for Health and Food Safety ( <i>Agentur für Gesundheit und Ernährungssicherheit GmbH</i> )
ARfD	Acute Reference Dose
BAES	Federal Office for Food Safety ( <i>Bundesamt für Ernährungssicherheit</i> )
BGB	Federal Law Gazette ( <i>Bundesgesetzblatt</i> )
BMG	Federal Ministry for Health ( <i>Bundesministerium für Gesundheit</i> )
BMLFUW	Federal Ministry of Agriculture, Forestry, Environment and Water Management ( <i>Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft</i> )
CA(s)	Competent Authority(ies)
CCA(s)	Central Competent Authority(ies)
CC-PSMR	Competence Centre for Pesticide Residues
CC-RANA	Competence Centre for Residue Analyses
CP	Country Profile
DAAs	District Administrative Authorities
DG (SANCO)	Health and Consumers Directorate-General
DSR	Data, Statistics and Risk Assessment ( <i>Daten, Statistik und Risikobewertung</i> )
EC	European Commission
EFSA	European Food Safety Authority
EU	European Union

FAO	Food of Animal Origin
FAPAS	Food Analysis Performance Assessment Scheme
FBO	Food Business Operator
FIS	Food Inspection Service
FNAO	Food of Non Animal Origin
FTEs	Full Time Equivalents
FVO	Food and Veterinary Office
GC	Gas Chromatography
GC-MS	Gas chromatograph coupled to mass spectrometer
GC-ECD	Gas chromatograph coupled to electron capture detector
GC-MS/MS	Gas chromatograph coupled to tandem mass spectrometer
GC-NPD	Gas chromatograph coupled to nitrogen phosphorus detector
ISO	International Organisation for Standardisation
LC	Liquid Chromatography
LC-MS/MS	Liquid Chromatograph coupled to tandem mass spectrometer
LMSVG	Federal Food Safety and Consumer Protection Act ( <i>Lebensmittelsicherheit und Verbraucherschutzgesetz</i> )
MA	Market Service ( <i>Marktamt</i> )
MRL	Maximum Residue Level
MRM	Multi Residue Method
MS(s)	Member State(s)

NRL	National Reference Laboratory
PAAAs	Provincial Administrative Authorities
PPPA	Plant Protection Products Act
PPP(s)	Plant Protection Product(s)
PPSs	Plant Protection Services
PTs	Proficiency Tests
RASFF	Rapid Alert System for Food and Feed
SOP	Standard Operative Procedure
SRM	Single Residue Method
WGs	Working Groups

## 1 INTRODUCTION

The audit formed part of the Food and Veterinary Office's (FVO) planned programme.

The audit took place from 06 to 10 June 2011. The team comprised 2 auditors from the FVO and 1 expert from a European Union (EU) Member State (MS).

Representatives from the central competent authorities (CCAs) accompanied the FVO team for the duration of the audit. An opening meeting was held on 06 June 2011 with the CCAs, the Federal Office for Food Safety (BAES) at the Ministry of Agriculture, Forestry, Environment and Water Management (BMLFUW), Ministry of Health (BMG), Austrian Agency for Health and Food Safety (AGES) and representatives of all regional competent authorities (CAs) responsible for official controls on the use of plant protection products (PPPs). At this meeting, the objectives of, and itinerary for the audit were confirmed by the FVO team and the control systems were described by the authorities.

## 2 OBJECTIVES AND SCOPE

The **objectives** of the audit were to:

- Evaluate the control systems in place for pesticide residues in foodstuffs of plant origin, in particular the implementation of official controls on pesticide residues under Regulation (EC) No 396/2005, implementation of the Rapid Alert System for Food and Feed (RASFF) related to pesticide residues and the implementation of requirements for official controls in this sector as specified in Regulation (EC) No 882/2004.

In terms of **scope**, the audit reviewed the designation of CAs for the official control of pesticide residues, their co-operation, audits and resources for performance of controls, as well as the organisation of controls including controls of the producers, national control programmes for pesticide residues, control procedures, sampling and laboratory performance.

In pursuit of these objectives, the following sites were visited:

**Table 1: Mission visits and meetings**

Visits/meetings		Comments
<b>Competent Authorities</b>		
Central	2	CA responsible for planning, co-ordination and performance of official controls on the marketing of PPPs - BAES  CA responsible for planning and co-ordination of and reporting on official controls of pesticide residues in food of non-animal origin – BMG

Regional	2	Plant Protection Services (PPSs) in Innsbruck and Vienna (provinces of Tirol and Vienna)
	2	Food Inspection Service (FIS) in Innsbruck and the Branch Office (Marktamt (MA) – 59) at FIS in Vienna
<b>Laboratories</b>		
Public	2	Competence Centre for Pesticide Residues (CC-PSMR) at AGES in Innsbruck
		Food Inspection Institute at the City Council of Vienna, Department 38 (MA-38)
<b>On-Site-Visits</b>		
Controls of producers	2	Observing inspections at growers in Innsbruck and Vienna (provinces of Tirol and Vienna)
Sampling for pesticide residues	2	Observing sampling for pesticide residues at wholesalers of fresh fruit and vegetables in Innsbruck and Vienna (provinces of Tirol and Vienna)

### 3 LEGAL BASIS AND STANDARDS

#### 3.1 LEGAL BASIS

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

EU legal acts quoted in this report refer, where applicable, to the last amended version. Full references to the EU acts quoted in this report are given in Annex 1.

#### 3.2 STANDARDS

Additionally, a Guideline developed under Article 28 of Regulation (EC) No 396/2005 and Draft Guidance Document SANCO/3346/2001/rev.7 were relevant for this audit.

A list containing details of the applicable standards is provided in Annex 2. Reference to specific provisions of this text is provided at the beginning of each section.

## **4 BACKGROUND**

### **4.1 MISSION SERIES**

This audit is part of a series of FVO audits in MSs by the EU on controls of pesticide residues in food of non-animal origin. Prior to the current audit series, the FVO carried out 2 series of missions to all MSs concerning pesticides in food of plant origin. The general overview reports of the former 2 mission series can be found on the DG (SANCO) internet site: [http://ec.europa.eu/food/fvo/specialreports/index\\_en.htm](http://ec.europa.eu/food/fvo/specialreports/index_en.htm)

During the previous audits FVO teams identified deficiencies in the planning and conducting of inspections for control of the marketing and use of plant protection products (PPPs). In addition, deficiencies were identified in the technique of sampling, assessment of risk to consumers and operation of the RASFF and the follow up of infringements. The main deficiencies found in the pesticide residue laboratories were related to the range of analysis.

The CAs of the MSs, subject to audits outlined in action plans how the recommendations would be addressed. These action plans are also published on the DG (SANCO) internet site together with the reports.

In the framework of the last series, the FVO carried out a mission to Austria in 2003, mission DG(SANCO)/9260/2003. The report of this mission can be found at [http://ec.europa.eu/food/fvo/ir\\_search\\_en.cfm](http://ec.europa.eu/food/fvo/ir_search_en.cfm). The overall conclusion of the mission report was that EU legislation regarding marketing and use of PPPs and pesticide residues has been transposed into Austrian law. Controls for the marketing of PPPs were confined to checks on the registration status of PPPs at wholesale and retail level and additional checks on the labels were carried out on samples taken to confirm the identity and content of active substances and certain physical properties of a limited number of products. Planning of controls on the use of PPPs was not performed and there was no systematic follow-up of infringements relating to marketing or use of PPPs. In terms of pesticide residue controls, a substantial number of samples were taken but from a limited range of commodities and the analytical scope in the laboratories visited was limited. A time-lapse between sampling and issuing of the result exceeded 8 weeks in some cases, so that rapid enforcement action, when necessary, was not possible. Shortcomings were identified in the context of Rapid Alert System for Food and Feed (RASFF) regarding risk assessment and follow-up measures.

### **4.2 COUNTRY PROFILE**

The FVO has published a country profile (CP) for Austria, which describes in summary the control systems for food and feed, animal health, animal welfare and plant health and gives an overview on the state of play of the implementation of recommendations of the previous FVO mission reports. The CP can be found at: [http://ec.europa.eu/food/fvo/country\\_profiles\\_en.cfm](http://ec.europa.eu/food/fvo/country_profiles_en.cfm)

## 5 FINDINGS AND CONCLUSIONS

### 5.1 RELEVANT NATIONAL LEGISLATION

#### Legal Basis

Article 291 of the Treaty on the Functioning of the EU establishes that MSs shall adopt all the measures of national law necessary to implement legally binding Union acts.

#### Findings

A new federal Plant Protection Products Act (PPPA) (*Pflanzenschutzmittelgesetz*) entered into force on 16 February 2011 providing the legal framework for the authorisation, marketing and use of PPPs and official controls related to PPPs. As Regulation (EC) No 1107/2009 applies directly, in addition to the provisions set in the Regulation the new PPPA provides more specific details about CAs involved and their responsibilities in activities related to PPPs, enforcement measures and sanctions.

According to the Austrian constitution and the requirements laid down in paragraphs 13 and 14 of the federal PPPA, Provinces are responsible for the drafting of legislation and setting the legal requirements for transposition of Directive 2009/128/EC. Currently, a project is running in all 9 provinces in co-operation with the CCA (BMLFUW) in order to have the new legal basis in force in the provinces before 25 November 2011.

In the province of Tirol, which was visited by the FVO team, PPPs related issues are regulated by the PPPA of Tirol (last amended on 01/06/2011). According to the provisions laid down in Article 1 (3), the main focus of this legal Act is to ensure minimising risks for human beings and the environment related to the use of PPPs.

In Vienna province, legal provisions related to PPPs are set out in the Viennese PPPA.

In relation to food safety, the main legislation in force is the Federal Food Safety and Consumer Protection Act (LMSVG) (*Lebensmittelsicherheit und Verbraucherschutzgesetz*) as last amended by BGB1. I No 95/2010). LMSVG provides the legal basis for official controls, including pesticide residues in and on food of non-animal origin (FNAO).

The Ordinance on Maximum Residue Levels of Pest Control Products (last amended by BGB1. II No 68/2008) provides the legal requirements on maximum residue levels (MRLs) of pesticides in and on foodstuffs, including food for infants and young children. Annex 3 to the Ordinance lays down the procedure and requirements to be followed regarding sampling for pesticide residues.

#### Conclusions

According to the information provided by the Austrian CAs, EU legislation within the scope of the audit has been transposed and implemented.

At provincial level, additional legislation is in place laying down the requirements for performance of official controls on the use of PPPs, enforcement measures and sanctions.

## 5.2 ORGANISATION AND IMPLEMENTATION OF OFFICIAL CONTROLS

### 5.2.1 Designation of Competent Authorities

#### Legal Requirements

Article 4(1) of Regulation (EC) No 882/2004 requires MSs to designate the CAs responsible for official controls. Article 5 sets out the scope of possible delegation to control bodies, the criteria for delegation, and the minimum criteria which must be met by control bodies.

#### Findings

The CCA in the area of PPPs related issues is the BMLFUW, Department III/9 Plant Health and Pesticides.

According to the requirements laid down in Article 2 (1) of the federal PPPA the main CA under this Act is the BAES at the BMLFUW except for the cases where no other CAs have been specifically pointed out.

In the area of food safety, including pesticide residue related issues the CCA is the BMG, Department II/B/13 (previously B/II/7) Food Safety and Official Foodstuffs Controls, Food Legislation.

According to the Austrian constitution, the CCA at federal level are responsible for drafting legislation and policy making. Provincial and district CAs are in charge of the implementation of the legal requirements in place, including planning, co-ordination, and performance of official controls within the scope of the audit. In the case of PPPs, provincial CAs are also responsible for drafting legislation complementing the federal legislation in place.

The structure and responsibilities of CAs at regional and district level have not changed since the previous mission. More detailed information about CAs within the scope of the audit are to be found in the CP of Austria: [http://ec.europa.eu/food/fvo/country\\_profiles\\_en.cfm](http://ec.europa.eu/food/fvo/country_profiles_en.cfm).

In the Province of Tirol, controls on the use of PPPs are delegated to a private company that is accredited in accordance with the European Standard EN 45004 “General Criteria for the operation of various types of bodies performing inspection”. For the purposes of the delegation of tasks, a contract is signed between the company and the Tirolean Provincial Government. Up until 2009, these contracts had a validity of 1 year. In 2010, a contract was signed for a period of 3 years (2010-2012). However, neither audits nor inspections of the control body are performed by the CA, as required by Article 5 (3) of Regulation (EC) No 882/2004.

In 6 out of 9 Provinces, official controls on the use of PPPs are delegated either to private control bodies, or to the Chambers of Agriculture.

There are 3 official laboratories for pesticide residue analysis, the CC-PSMR at AGES in Innsbruck, the Competence Centre for Residue Analysis (CC-RANA) in Vienna and the Food Inspection Institute at the City Council of Vienna, Department 38 (MA-38).

Since 2006 the CC-PSMR in Innsbruck has been designated as the national reference laboratory (NRL) for pesticide residues in fruit and vegetables and single residue methods (SRM). The CC-RANA in Vienna is the NRL for pesticide residues in cereals, feeding stuffs and food of animal

origin (FAO). A procedure has been initiated on the nomination of CC-PSMR in Innsbruck to take over the role of NRL for pesticide residues in cereals. Official designation is awaited.

## **Conclusions**

CAs are designated and their responsibilities are clearly identified at central, regional and district level for both controls on the use of PPPs and controls on pesticide residues in and on FNAO, as required by Article 4(1) of Regulation (EC) No 882/2004.

Neither audits nor inspections of the control body in charge of official controls on the use of PPPs in Tirol are performed by the CA. This is not in line with the requirements of Article 5 (3) of Regulation (EC) No 882/2004.

Official laboratories for pesticide residues are designated in line with the provisions laid down in Article 12(1) of Regulation (EC) No 882/2004.

### *5.2.2 Resources for Performance Controls*

## **Legal Requirements**

Article 4 of Regulation (EC) No 882/2004 requires the CAs to ensure that they have access to a sufficient number of suitably qualified and experienced staff; that appropriate and properly maintained facilities and equipment are available. Article 6 requires CAs to ensure that staff receive appropriate training, and are kept up-to-date in their competencies.

## **Findings**

For PPP related issues, there are 3 staff members at federal level in the BMLFUW.

At regional level, there are 2 staff members in the province of Tirol who are involved in the planning, co-ordination and reporting of results on the controls on the use of PPPs. In addition, there are 9 contact points at District Administration Authorities (DAAs) (including the city of Innsbruck), who are in charge of enforcement (administrative proceedings and penalties).

As all 3 members of the control body are also growers, in order to avoid any conflict of interest, they are obliged to sign a declaration and cannot perform official controls in the districts where their place of residence or commercial operation are.

In the province of Vienna, 3 staff members are involved in the official control on the use of PPPs. One of them is in charge of planning and co-ordination of official controls. The other 2 staff members perform inspections. All staff members are also involved in other types of activities in the area of plant protection. In addition, there are 3 members of staff at the Provincial Administrative Authorities (PAAs) (City Council of Vienna), who are in charge of enforcement and administrative proceedings in the case of any identified non-compliances.

Documentary evidence was provided about training of staff members involved in PPPs related activities in both provinces visited. As staff at provincial level have also responsibilities in other areas, training provided covered different topics, including PPPs related issues. However, the last training on PPPs and official controls on the use of PPPs organised by the BMLFUW and performed by AGES took place in 2006. Training of inspectors from the control body in Tirol is

their own responsibility aiming at meeting the criteria set out in the contract with the PAAs.

For pesticide residues related issues, there are 4 staff members at federal level, who are also involved in additional activities in the area of food safety.

In the province of Tirol, there are 4 staff members (2 of them work full time, and the other 2 work half time). The full time staff members are in charge of the co-ordination of and reporting on official controls of food stuffs, including official controls for pesticide residues in and on FNAO. One of them is in charge of the quality assurance system in place. Performance of official controls is the responsibility of 20 staff members in all 9 districts. Five of them are in charge of official controls in the city of Innsbruck.

At the FIS in Vienna, the total number of staff is 48 full time equivalents (FTEs), made up as follows: 8 FTEs at regional level and 40 FTEs in all 10 branch offices. 3,5 FTEs are allocated to the branch office MA-59 visited by the audit team. All staff members are food inspectors, dealing with official controls, including controls of pesticide residues in FNAO. In addition, 3 staff members at the PAA in Vienna deal with enforcement and administrative proceedings.

Information was provided by the CAs about the training of food inspectors dealing with official controls in the area of food safety. A legal requirement is in place for food inspectors to participate in induction training. This induction training is divided into 2 parts – theoretical and practical, and it's duration is 9 months. After completion of the training food inspectors have to pass an exam.

In addition, further training takes place designed in modules covering various topics. Module No 8 covers pesticide residues. After the entry into force of the LMSVG in 2006, a series of training courses was organised during 2007 – 2009. Some 283 staff members participated in these training sessions.

In the laboratory in Vienna, there are 10 staff members in the residue section. Five of them deal with pesticide residue analysis. Regarding the background of these 5 staff members, 3 have university degrees in chemistry, and the other 2 are technicians. Internal and external training are organised. Two further staff members are involved in providing expert opinions (risk assessment). They attended the specialised training provided by AGES in 2009.

In the CC-PSMR Innsbruck the total number of staff dealing with pesticide residue analysis is 10 (7.3 FTEs). Two of them have university degrees, and 8 staff members are technicians (7 of them qualified laboratory technicians).

## **Conclusions**

CAs and laboratories visited by the audit team have adequate facilities and experienced staff so as to ensure that official controls performed are effective, in accordance with the requirements laid down in Article 4 of Regulation (EC) No 882/2004.

Although annual training programmes are not in place, regular training and up-to-date information is provided to the staff members as required by Article 6 of Regulation (EC) No 882/2004.

### 5.2.3 *Controls on the Use of Plant Protection Products*

#### **Legal Requirements**

Article 4.1 of Regulation (EC) No 853/2004 and Annex I, Part A.III of the same Regulation requires that food business operators (FBOs) producing or harvesting plant products are, in particular, to keep records on any use of PPPs.

Article 17 of Directive 91/414/EEC requires MSs to officially check the use of PPPs to see whether they comply with the requirements of the Directive.

#### **Findings**

In the region of Tirol, an annual programme is in place for controls on the use of PPPs. The programme contains detailed information and instructions for the inspectors of the control body, including objectives, legal basis for official controls, persons in charge of co-ordination, number and scope of controls, type of growers subject to inspection and deadlines for reporting the results. A decision on growers to be inspected is taken by the regional CA. As in the province of Tirol controls on the use of PPPs are delegated to a control body. Criteria to be met and tasks to be performed are clearly defined in the letter of authorisation issued by the regional CA of Tirol. In addition, written instructions and a standard inspection report are provided to the control body.

In the list of fruit and vegetable growers for 2009 published by a private company, the number of fruit growers in Tirol is 123 and the number of vegetable growers is 187. According to the criteria for the planning of official controls, fruit and vegetable growers should be the subject of inspection every 6 years, so that every year 21 fruit growing and 31 vegetable growing farms are visited. In addition, DAA Landeck provided a list of 92 fruit growers. The majority of them are small-scale growers. As many complaints by bee keepers have been submitted to the CAs in this district specific campaigns are carried out for controls of these farmers who are considered as a higher risk category, and they are the subject of inspection every 3 years (28 growers a year). Another type of inspection under the annual control programme are the follow-up inspections of growers found to be non-compliant in previous years. Representatives of the regional CA explained that, in the case of any serious non-compliances found (use of non-authorised PPPs) the follow-up inspection should take place the next year. In all other cases, follow-up inspections are to be performed within 2 or 3 years. As there are many animal farms in the province of Tirol, quite high number of inspections per year are performed at growers of corn and cereals used as feeding stuffs.

In the province of Vienna, the annual control programmes in place are developed at regional level by the PPPs team leader. The programmes contain information on the number of inspections per month, the type of grower and the inspector in charge. Every year around 10% of the growers are subject to inspection. Growers are selected randomly. Non-compliant growers are inspected again within 3 years. According to data provided by the regional CA (based on information available at the Viennese Chamber of Agriculture), the number of growers in the province of Vienna is around 440.

According to information provided during the opening meeting by representatives of the Provincial CAs, legal requirements are in place for growers to keep records on the application of PPPs.

In both provinces visited legal requirements are in place for keeping records on the application of PPPs (for 4 years in the province of Tirol and for 7 years in the province of Vienna) and for the

qualification of staff dealing with the application of PPPs. In accordance with the legal provisions in place, refreshment training is not required. However, after the entry into force of the new PPP Acts in the provinces expected in November 2011, staff dealing with the application of PPPs should attend refreshment courses every 5 years. Representatives of the regional CAs in both provinces visited explained that in the case where PPPs are applied not by the farmer himself, but by any other member of staff, they need to attend refreshment training every year<sup>1</sup>. In addition, when external companies provide services on the application of PPPs, inspectors are obliged to check their qualification certificates after the inspection.

According to the annual reports under Article 17 of Directive 91/414 for 2008 and 2009, the number of inspections at growers performed in the province of Tirol was 50 and 106 respectively. In the province of Vienna those figures were as follows: 113 inspections in 2008 and 89 in 2009. The main non-compliances found in the region of Tirol were related to the use of non-authorized PPPs, safety requirements and records kept on the application of PPPs. In the province of Vienna, the main non-compliances identified were related to the use of non-authorized PPPs, storage of PPPs and non-authorized uses of PPPs.

The FVO team observed 2 inspections at growers in both regions – Tirol and Vienna. At the farm visited in Tirol, cereals and vegetables (mainly carrots) are grown on a total area of 52 ha. In the province of Vienna, a greenhouse was visited where mainly tomatoes and some sweet peppers are grown. The total area was 3.5 ha, and around 2000 tonnes of tomatoes a year are produced. Both growers were certified to private schemes and their main customers were big retail chains.

Although there are no unified procedures for official controls on the use of PPPs, a similar approach was followed by the inspectors in both provinces. In Tirol, the inspection was performed by 1 inspector. In Vienna, the inspection at the greenhouse was performed by a team of 2 staff members. In both provinces, the main focus was on checks of the storage of PPPs, personal protective equipment, spray diaries, qualification certificates and equipment for the application of PPPs. Personal laptops and specific software were used to check the authorisation status of PPPs available and PPPs listed in the spray diaries, paying particular attention to the uses authorised for crops grown, targeted pests, application rates, timing of application, pre-harvest intervals and conditions of authorisation. During the inspections, inspection reports were drafted. After being finalised, reports were signed by the inspectors and by the growers. Original copies of the inspection reports are kept by the CA in charge and the second copy is left with the grower. In Tirol, reports drawn are handed over by the inspector from the control body to the regional CA.

CAs in both provinces stated they are aware of the requirement for inspections to be performed without prior warning. However, inspections at growers are announced in order to ensure that growers will be available for the inspection (1 day prior to the inspection in Tirol and 2 to 4 weeks in Vienna).

In addition to inspections at growers, official controls on the use of PPPs in the province of Vienna are also performed on the field where the application of PPPs is in progress. These inspections are unannounced and they are not included in the annual control programme. In the case of suspicion, for the purposes of controls on the use of PPPs, samples can be taken either from PPPs for formulation analysis, or from the crops (leaves or fruit) for pesticide residues. Sampling was demonstrated in Tirol.

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<sup>1</sup> In their response to the draft report, the CAs of Austria noted that after entry into force of the new PPP Acts in the provinces (expected in November 2011) all staff dealing with application of PPPs should attend refreshment courses every 5 years, without distinguishing between farmers and any other staff members.

## **Conclusions**

Legal requirements are in place in all 9 provinces for farmers to keep records on the application of PPPs. This is in line with the requirements of Article 4.1 of Regulation (EC) No 852/2004 and Annex I, Part A.III of the same Regulation.

Official controls on the use of PPPs are performed in compliance with the provisions laid down in Article 17 of Council Directive 91/414/EEC.

In both provinces visited (Tirol and Vienna), inspections at growers are announced which is not in line with the requirements laid down in Article 3 (2) of Regulation (EC) No 882/2004.

### *5.2.4 Control Programmes for Pesticide Residues*

#### **Legal Requirements**

Article 26 of Regulation (EC) No 396/2005 requires MSs to carry out official controls on pesticide residues in order to enforce the compliance with the Regulation. Article 27 requires MSs to take a sufficient number and range of samples to ensure that the results are representative of the market, and the point of sampling shall allow subsequent enforcement action to be taken. Article 30 requires MSs to establish multi-annual control programmes for pesticide residues. It specifies the requirements of the control programme.

#### **Findings**

Control programmes for pesticide residues have been in place in Austria since 1997. A multi-annual national control programme for pesticide residues has been introduced for the first time after entry into force of Regulation (EC) No 396/2005. However, no detailed information is provided in the programme on the pesticides to be analysed and the criteria applied in the planning stage as to the content of the programme to fully comply with the requirements laid down in Article 30 (1) of the same Regulation.

An annual national control programme for pesticide residues is in place. The programme contains detailed written instructions and sampling plans. The written instructions are provided from the central level by Department II/B/13 at BMG. Once drafted, the programme is transmitted to all Provinces (through the Province Governors) for implementation as well as to AGES. The written instructions specify the commodities to be sampled, sampling location, procedures to be followed by inspectors and which information should appear on the sampling protocol. In 2011, the written instructions also list requirements on how to proceed in cases where the MRL and Acute Reference Dose (ARfD) have been exceeded, as well as in the case of non-authorised pesticides in organic produce. Sampling plans are enclosed with the written instructions, and they are developed for every single commodity, also providing a break-down of the number of samples to be taken per quarter and origin of produce (domestic or imported) in every province. Department Data, Statistics and Risk Assessment at AGES are in charge of drafting sampling plans. Every year, 6 main commodities are the subject of control for pesticide residues in the framework of the national control programme, and 100 samples are taken per commodity. In addition, 6 or 7 further commodities are subject to control and 30 samples per commodity are planned to be taken. Samples within the framework of the annual control programme are taken in all 9 provinces.

In addition to the national control programme, further samples are taken within the framework of the EU co-ordinated control programme. The number of samples to be taken complies with the requirements set out in the relevant EU Regulations. Three provinces are involved in taking those

samples – Vienna, Tirol and Carinthia. In the framework of the EU control programme, the written instructions sent to provincial CAs also lists the requirements on the number of samples to be taken from organic produce.

Samples taken for both the national and the EU coordinated control programme have different codes that are to be listed in the sampling protocol.

Based on both national and EU co-ordinated control programme for pesticide residues provincial CAs prepare their own control programmes specifying the number of samples to be taken per commodity in each of the districts (branch offices) in their region. The decision on the FBO to be visited is taken by the food inspectors based on their knowledge and previous experience.

The number of commodities under the annual control programme and the number of samples planned to be taken is quite low. However, documentary evidence was provided by the CAs about additional campaigns under which additional commodities are sampled for pesticide residues. These campaigns could be performed either at national or at provincial level and they reflect recent problems identified or problems of specific concern for the public. In the province of Vienna, specific campaigns in progress at the time of the audit were related to controls of pesticide residues in citrus fruit, strawberries, tomatoes, peppers and dried fruit. For comparison, in 2009 the plan was to take 780 samples under both the national and the EU co-ordinated control programme. In fact, the number of samples taken was 2071, made up as follows: 1359 samples of fresh fruit and vegetables, 54 samples of cereals, 499 samples of processed food, 36 samples of FAO and 123 samples of baby food. 28 samples of fresh fruit and vegetables or 2% of all samples taken were found to be non-compliant (MRLs being exceeded).

## **Conclusions**

In accordance with the requirements of Article 26, official controls of pesticide residues are performed in order to enforce compliance with Regulation (EC) No 396/2005.

Although the number of samples for pesticide residues in terms of commodities covered is quite low, additional campaigns are performed either at national or provincial level taking into account previous control programmes and pesticide related issues of public interest in order to ensure that the results are representative of the market, as required by Article 27 of Regulation (EC) No 396/2005.

A multi-annual national control programme for pesticide residues has been established. However, the format of this programme is not fully compliant with the requirements laid down in Article 30 (1) of Regulation (EC) No 396/2005.

### *5.2.5 Prioritisation of Official Controls*

## **Legal Requirements**

Article 3 of Regulation (EC) No 882/2004 requires that official controls are carried out regularly, on a risk basis and with appropriate frequency, taking account of (a) identified risks; (b) the food business operators' past record as regards compliance; (c) the reliability of any self-checking that has already been carried out; and (d) any information that might indicate non-compliance

Article 10 (2) (a) of Regulation (EC) No 882/2004 requires that official controls on food and feed include, *inter alia*, examination of any control systems that food and food business operators have put in place and the results obtained.

## **Findings**

Although controls on the use of PPPs at growers were stated to be performed on a random basis, information on previous non-compliances identified is taken into account in the planning stage.

Official controls of pesticide residues are performed in accordance with the annual national control programme in place. Official controls are risk based and data on previous non-compliances, RASFF notifications, consumption data and checks of the auto-control systems in place at FBOs are taken into account when planning the controls. In addition, the risk category of FBOs is also taken into account. A higher risk category is a criterion for higher frequency of controls.

## **Conclusions**

Although official controls on the use of PPPs were stated to be performed on a random basis, evidence was provided by both Tirolean and Viennese CAs that inspections at growers take account of data from previous years.

Official controls of pesticide residues are risk based. When planning official controls, CAs take account of FBOs' risk category and criteria listed in Article 3 of Regulation (EC) No 882/2004.

### *5.2.6 Sampling*

## **Legal Requirements**

Commission Directive 2002/63/EC establishes methods of sampling for the official control of pesticide residues. Article 11 of Regulation (EC) No 882/2004 establishes requirements for sampling and analysis.

## **Findings**

A standard operative procedure (SOP) on sampling for pesticide residues is in place. In addition, the requirements laid down in Commission Directive 2002/63/EC are transposed into Austrian legislation by Annex III of the Food Safety and Consumer Protection Act of 2006.

Sampling for pesticide residues takes place mainly at wholesale markets and retail chains. Samples are also taken from imported produce under Regulation (EC) No 669/2009 at both designated points of entry (Vienna and Linz airports) according to the frequency laid down in Annex I to the Regulation.

Counter samples are always taken. The second sample is kept by the FBO where the sampling has taken place. The second sample is usually for the producer (distributor, importer or grower). Producers are informed about the sampling by phone on the same day. If the FBO requires, a third sample could be taken and kept on his premises.

The audit team observed sampling carried out in both provinces. In Innsbruck, apples were sampled at a wholesaler of fresh fruit and vegetables. In Vienna, a sample was taken from fresh cucumber at a wholesale market. Both commodities were domestic produce.

A uniform approach was demonstrated by the sampling inspectors. The requirements regarding the number of primary samples, number of units and weight of the sample, listed in the SOP, respectively the Commission Directive 2002/63/EC were strictly followed. Lots were correctly identified. The samples were placed in paper bags (in Innsbruck) and in plastic bags (in Vienna), properly sealed and labelled. Labels contained an identification number, the code of the campaign,

details of the commodity and the FBO. In the province of Tirol, samples are delivered to the laboratory the same day by the sampling inspector. In Vienna, official transport is organised to collect the samples taken in all branch offices and to organise delivery of samples to the laboratory. Samples are transported in cool boxes.

In both cases, an electronic sampling report form was completed in a computerised system in place. The original copies of the sampling report are always provided to the FBOs. One copy accompanies the sample to the laboratory. In Tirol, the regional CAs stated that sampling reports are also sent to the producer, whose produce has been sampled.

## **Conclusions**

Sampling performed was fully in line with the requirements of Commission Directive 2002/63/EC in terms of the number of primary samples and the size of the laboratory sample (the number of units and the weight).

In accordance with Article 11(7) of Regulation (EC) No 882/2004, samples were properly sealed and labelled.

### *5.2.7 Laboratory Performance*

## **Legal Requirements**

Article 33 of Regulation (EC) No 882/2004 requires MSs to designate NRLs for each European Union (EU) Reference Laboratory, and specifies tasks for the NRL.

Article 12 of Regulation (EC) No 882/2004 requires that competent authorities only designate laboratories that operate and are assessed and accredited in accordance with the standards EN ISO/IEC 17025 and EN ISO/IEC 17011.

Article 28 of Regulation (EC) No 396/2005 requires that the methods of analysis of pesticide residues shall comply with the criteria set out in the relevant provisions of Community law relating to official controls for food and feed, and that all laboratories analysing samples for the official controls on pesticide residues participate in the Community proficiency tests for pesticide residues organised by the Commission.

## **Guidelines**

Method Validation and Quality Control Procedures for pesticide residues analysis in food and feed, Document SANCO/10684/2009, developed under Article 28 of Regulation (EC) No 396/2005

## **Findings**

### National Reference Laboratories for pesticide residues

Two NRLs have been designated for pesticide residue analysis. The CC-PSRM is the designated NRL for single residue methods (SRMs) and pesticide residues in fruit and vegetables. As an NRL, CC-PSRM has additional activities, including organising annual workshops for official and private laboratories for pesticide residues from Austria and some neighbouring countries, organising proficiency and inter-laboratory tests, collaboration with the EU Reference Laboratories, providing scientific and technical support to other laboratories, developing new analytical methods and

providing technical assistance to the CA for the co-ordination of official controls within the framework of the national and the EU co-ordinated control programmes.

#### Laboratories visited

Two designated official laboratories for pesticide residues in Austria were visited – the CC-PSMR in Innsbruck and the Food Inspection Institute at the City Council of Vienna, Department 38 (MA-38).

In both laboratories visited, official and private samples were analysed. In 2009 and 2010 the total number of samples analysed in the laboratory in Innsbruck was, as follows: 1462 (1017 of which were official samples) and 1983 (1415 of which were official samples). The private samples analysed come from growers in the region and processing companies in the province of Tirol. In 2009 and 2010, the number of official samples analysed in the laboratory in Vienna was, as follows: 228 and 256. Representatives of the laboratory stated that official samples represent around 70 % of the total number of samples analysed. The remainder are private samples.

#### *Analytical scope and methods*

The MA-38 has GC-ECD, GC-NPD, GS-MS and LC-MS/MS. A GC-MS/MS has just been installed and will be used for pesticide residue analysis in the future. The analytical methods used include 2 multi-residue methods (MRMs) (1 based on the Luke-extraction for analysis using GC-technique and the QuEChERS for analysis using the LC). Two SRMs are also applied, including EN 13191-2:2000 for analysis of bromide and EN 12396-2:1998 for analysing dithiocarbamates.

The CC-PSMR in Innsbruck has GC-MS, GC-ECD and LC-MS/MS. Two MRMs are used, one based on QuEChERS extraction and one based on ChemElut-method (GC-MS and LC-MS/MS analysis). Several SRMs are used for analysis of ethephon, amitraz (and its metabolites included in the residue definition), glyphosate, nicotine, chlormequat/mepiquat/diquat, dithiocarbamates and bromide.

Regarding special requirements (as baby food), low reporting limits and limits of quantification can be achieved by the CC-PSRM in Innsbruck.

#### *Accreditation*

Both laboratories visited have been accredited to ISO 17025 since 1998 by the Austrian Accreditation Body (Ministry of Economy, Family and Youth). The accreditation scope of the laboratory in Vienna is fixed and covers 124 analytes. The limited analytical scope does not allow all pesticides listed in Annex I of Regulation (EC) No 915/2010 to be analysed, as well as the full range of pesticides authorised for placing on the market and use in the country. However, validation data has been submitted to the accreditation body for extending the scope covering 100 additional analytes using QuEChERS extraction and LC-MS/MS analysis. The extension of accreditation is expected within 5-6 weeks. The scope of accreditation in the laboratory in Innsbruck is open and the number of analytes covered is around 500.

#### *Quality assurance systems and method validation*

The recommendations of the Commission Guideline on Method Validation and Quality Control Procedures for Pesticide Residues Analysis in Food and Feed (Document SANCO/10684/2009) have been fully implemented in the CC-PSRM in Innsbruck. Some shortcomings were identified in the laboratory in Vienna regarding sample preparation (blending of the whole sample was not possible) and samples were not bracketed with calibration standards as required by Document

SANCO/10684/2009<sup>2</sup>. The CC-PSMR in Innsbruck participated in the Food Analysis Performance Assessment Scheme (FAPAS) and EU Proficiency Tests (PTs) with good results. The laboratory in Vienna participated in FAPAS PTs with good results.

Measurement uncertainty is applied in both laboratories. In the case of MRLs being exceeded a risk assessment is performed by authorised AGES staff members. An expert opinion is always provided as part of the analytical report. The laboratory has participated in FAPAS and EU PTs with good results.

The time-lapse between sampling and reporting analytical results is usually 1 to 3 weeks in Innsbruck, and in Vienna 4 to 6 weeks. Samples taken at designated points of entry are considered to be a priority and results are finalised in less than 24 hours.

## **Conclusions**

NRLs have been designated as required by Article 33 of Regulation (EC) No 882/2004.

In compliance with the requirements set out in Article 12 of regulation (EC) No 882/2004, both official laboratories for pesticide residues have been accredited to ISO 17025.

Both official laboratories have participated in PTs that is in line with the requirements laid down in Article 28 of Regulation (EC) No 396/2005.

SANCO Guidelines on Method Validation and Quality Control Procedures for pesticide residues analysis in food and feed (Document SANCO/10684/2009) has been fully implemented in CC-PSRM in Innsbruck. Some shortcomings were identified in implementing the same Guidelines regarding sample preparation and calibration in MA-38 in Vienna.

The analytical scope covered in the MA-38 in Vienna needs to be broadened in order to allow analysing the pesticides listed in Annex I to Regulation (EC) No 915/2010 and the full range of pesticides authorised for placing on the market and use in the country.

### *5.2.8 Procedures for Performance and Reporting of Control Activities*

## **Legal Requirements**

Article 8 of Regulation (EC) No 882/2004 requires that CAs carry out their official controls in accordance with documented procedures, containing information and instructions for staff performing official controls.

Article 9 of the above Regulation requires CAs to draw up reports on the official controls carried out, including a description of the purpose of official controls, the methods applied, the results obtained and any action to be taken by the business operator concerned.

Article 30(3) of Regulation (EC) No 396/2005 requires MSs to publish, on an annual basis, all results of national residue monitoring on the Internet. Article 31 of the Regulation requires Member States to submit the results of official controls on pesticide residues to the Commission, the European Food Safety Authority (EFSA), and the other MSs.

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<sup>2</sup> In their response to the draft report the CAs noted that a rotor-type grinder with sufficient capacity will be purchased in 2012 allowing blending of the whole sample. Regarding bracketing calibration, Austrian CAs stated in their comments that actions have already been taken in order to achieve compliance with the requirements laid down in document SANCO/10684/2009.

## Findings

As controls on the use of PPPs is the responsibility of the provinces, documented procedures for performance of controls have not been developed by the CCA. However, written instructions to the inspectors in charge are provided in the annual control programmes (in the case when provincial CAs are in charge of official controls) or in the contracts signed (in the case when this task is delegated to other control bodies). As regional CAs are in charge of providing instructions and standard templates, it could differ from province to province. However, during the inspections at growers observed by the FVO team in both provinces, a similar approach was followed.

Inspection reports are drawn up during the inspections at growers. A standard template is developed by the CA at provincial level, stating the legal basis for official controls, scope of inspection and findings. In the province of Vienna, in the case of irregularities identified in addition to the findings, the date of a follow-up inspection is also indicated in the inspection report. In the case where samples are taken during the inspection, sampling protocols are drafted following standard templates.

After completion of the inspections, 1 copy of the inspection report is always left with the growers who were the subject of inspection and the original copy is kept by the inspectors. In the province of Tirol where the official controls on the use of PPPs are delegated to a private company, the original copy is provided to the regional CA after the inspection. In the case of sampling during the inspections at growers, 3 copies of the sampling protocol are produced; 1 accompanies the sample to the laboratory, 1 is left with the grower and 1 is kept by the inspector.

A deadline is fixed by the CCA (BAES) for submission of annual reports. Regional CAs in all 9 provinces are required to provide these reports to the CCA not later than 30 June the following year. The CCA is in charge of summarizing the data provided and drafting the annual report under Article 17 of Directive 91/414/EEC and submitting the report to the European Commission (EC).

As all FISs have a quality management system in place, a Manual of Procedures was developed and was in place in the offices visited by the audit team. An SOP is followed for performance of official controls at FBOs, and 3 check lists are in place for different types of FBOs. One of the check lists is to be used in the case of inspections at wholesalers and retailers of fruit and vegetables. In addition, a standard operative procedure (SOP) is in place on sampling for pesticide residues.

Standard templates of inspection reports are used by the inspectors. Inspection reports are drawn up during the inspection, using the computerised system. In the case of sampling for pesticide residues, sampling protocols are drafted and the electronic copy is sent to the laboratory immediately after filling in the standard form, so that the sampling protocol is available in the laboratory prior to the delivery of the sample. Copies of inspection reports are only provided to the FBOs in the case of any non-compliances found. In the case of sampling, 1 hard copy of the sampling protocol is always left with the FBO at whose premises the sampling took place and 1 hard copy is provided to the producer (importer, distributor or grower). Electronic copies of the sampling protocols are also sent to both the FBO and the producer.

FISs provide reports to the CCA (BMG) on inspections performed on a regular basis. Previously, 6 monthly and annual reports were submitted at the federal level. Currently, reports are provided 3 times a year – the beginning of July, the end of the third quarter and at the end of the year.

In addition, activities in the framework of the annual national and EU control programmes for pesticide residues, activities under the specific campaigns and results from pesticide residue analyses are reported to Data, Statistics and Risk Assessment (DSR) Department at AGES. Data is

summarised and an annual report on official controls for pesticide residues is prepared. This report is published on the BMG web-site and is sent to EFSA.

## **Conclusions**

Although documented procedures for performance of official controls on the use of PPPs are not in place, written instructions to the inspectors in charge are provided by the regional CAs and a similar approach was followed by the inspectors in both provinces.

In the area of pesticide residues, procedures for performance and reporting of control activities are in place as required by the provisions laid down in Article 8 of Regulation (EC) No 882/2004.

Inspection reports are drawn up on the official controls of pesticide residues and on the use of PPPs, as required by Article 9 of Regulation Regulation (EC) No 882/2004.

In accordance with the provisions set out in Article 17 of Directive 91/414/EEC, annual reports on the results of the inspections performed are drafted by the BMLFUW and they are submitted to the other MSs and the EC.

All results of the national residue monitoring are published on the BMG web-site and they are also provided to the EC, EFSA and the other MSs that is in compliance with the requirements of Articles 30 (3) and 31 of Regulation (EC) No 396/2005.

### *5.2.9 Co-ordination and co-operation between and within Competent Authorities*

## **Legal Requirements**

Article 4(3) of Regulation (EC) No 882/2004 provides for efficient and effective co-ordination between CAs.

Article 4(5) of Regulation (EC) No 882/2004 requires that, when, within a CA, more than 1 unit is competent to carry out official controls, efficient and effective co-ordination and co-operation shall be ensured between the different units.

## **Findings**

Co-ordination and exchange of information between the Provinces, BAES and BMLFUW takes place through meetings at least twice a year. In addition, reports on inspections at pesticide retailers and wholesalers are sent by BAES to all regional CAs on a monthly basis to make them aware of PPPs or specific batches found to be non-compliant and to enable inspectors in the Provinces to follow-up on the state of play at grower level.

A similar approach is followed in the area of pesticide residues. Representatives of BMG, AGES and all 9 provinces attend meetings organised at least twice a year. An additional tool for communication and co-operation are the 2 Working Groups (WGs) (WG on the Sampling Plan and WG on the Inspection Plan). One of the WGs is chaired by the Provinces, and the second WG is chaired by AGES. Workshops and ad-hoc meetings are also organised in the case of specific problems identified or new legislation.

Supporting documents were provided to the audit team on the communication and co-operation within and between CAs responsible for official controls within the scope of the audit.

## **Conclusions**

Effective communication and co-operation within and between CAs takes place as required by Article 4 of Regulation (EC) No 882/2004.

### *5.2.10 Enforcement Measures*

## **Legal Requirements**

Article 54 of Regulation (EC) No 882/2004 requires a CA which identifies a non-compliance to take appropriate action to ensure that the operator remedies the situation.

Article 55 of Regulation (EC) No 882/2004 states that MSs shall lay down the rules on sanctions applicable to infringements of feed and food law and other EU provisions relating to the protection of animal health and welfare and shall take all measures necessary to ensure that they are implemented. The sanctions provided for must be effective, proportionate and dissuasive.

## **Findings**

According to the requirements set out in Articles 13 and 14 of the federal PPPA, official controls on the use of PPPs are the responsibility of the Provinces, including enforcement measures and sanctions. In both Provinces visited a similar approach is followed in the case of irregularities identified.

In the case of a first violation and minor shortcomings (incomplete spray diary), inspectors provide advice to the non-compliant grower explaining what corrective measures are to be taken. In the case of a first violation serious problems are identified (non-authorized PPPs on storage or non-authorized uses of authorized PPPs) written instructions are provided to the grower about corrective measures to be undertaken. In order to verify that corrective measures have been taken in due course, either the grower is required to provide written evidence (notification for disposal of the non-authorized PPPs), or a follow-up inspection at the grower is performed. In the case of repeated and serious violations, inspectors are in charge of submitting a notification about the infringement to the DAAs. In the Province of Vienna, this notification is also accompanied by supporting documents (inspection reports and an additional detailed report about the scope of inspections performed, irregularities found and legal requirements found to be in breach). The final decision on sanctions to be imposed and enforcement measures are the responsibility of the DAA on whose territory the grower is located. According to the legal requirements in place in the Province of Tirol, the amount of fines to be imposed in the case of the first non-compliance identified is up to 3500 Euros. In the case of a second infringement, the amount of fines is doubled (up to 7000 Euros). In the Province of Vienna, these amounts are 5000 and 10 000 Euros respectively.

Regarding pesticide residues, legal requirements on enforcement measures in case of non-compliances identified are laid down in Article 39 of LMSVG transposing fully the provisions of Article 54 (2) of Regulation (EC) No 882/2004. According to the requirements of Article 41 of LMSVG, in the case where FBOs didn't take any measures to remedy the situation or health risks for consumers were identified, the food concerned is subject to seizure. The level of fines to be

imposed are set out in Article 90 of LMSVG and could vary from up to 20 000 Euros in the case of the first infringement and up to 40 000 Euros in the case of repeated infringements or delays in paying the fixed fine. In the case of serious health risks for consumers non-compliant cases are to be reported to the Court.

In both Provinces visited, CAs stated that any decision on enforcement measures should be proposed by the food inspectors. However, enforcement measures and sanctions to be imposed are the responsibility of DAAs on whose territory the FBOs' premises are located. Taking into account that samples for pesticide residues are usually taken at wholesalers and retailers and that the time lapse between sampling and finalising the laboratory analysis could vary (depending on the laboratory responsible for the analysis) from 2 to 6 weeks, in most cases products found to be non-compliant have already been consumed and enforcement measures, for example, withdrawal from the market or recall could not be applied. Although follow-up inspections at FBOs do not take place, analytical results are taken into account for planning future inspections and for risk categorization of FBOs. It is important to highlight that there were no cases of domestic produce found to be non-compliant in the last 3 years. In addition, according to monitoring data for 2009, 28 samples of fresh fruit and vegetables or 2% of all samples taken were found to be non-compliant and a risk to consumers was identified in 5 of these cases.

For both official controls on the use of PPPs and official controls of pesticide residues, CAs in charge of the enforcement measures and sanctions to be imposed are the relevant DAAs. Information on measures taken and sanctions imposed are not reported back to the CAs who performed the inspections. However, 2 cases were demonstrated by the regional CAs in Tirol and Vienna where information on sanctions imposed was requested from DAAs and provided back to the regional CAs (both cases are related to official controls on the use of PPPs). In the Province of Tirol, irregularities found were related to lack of personal protective equipment and spray diary kept for less than 4 years. The fine imposed was 200 Euros. In the province of Vienna, 3 inspections were performed at a grower within 19 months, and on all three occasions non-authorized PPPs were found in storage as well as other irregularities (non-authorized uses, non-labelled PPPs stored etc). Although a notification and a detailed report on the infringements were sent to the DAA in charge of enforcement measures and sanctions, the measure undertaken was only a warning.

## **Conclusions**

National legislation is in place for sanctions to be imposed, enforcement measures to be taken and procedures to be followed in the case of non-compliances identified in the areas of PPPs and pesticide residues in order to ensure that appropriate action is taken as required by Article 54 of Regulation (EC) No 882/2004.

As DAAs are in charge of enforcement measures and sanctions and feedback information is not provided to the CAs in charge of official controls at FBOs and growers, there was no clear evidence sanctions imposed being effective, proportionate and dissuasive as required by Article 55 of Regulation (EC) No 882/2004.

### *5.2.11 Verification Procedures and Audit*

## **Legal Requirements**

Under Article 4 of Regulation (EC) No 882/2004 CAs are required to carry out internal audits, or have external audits carried out. These must be subject to independent scrutiny and carried out in a

transparent manner. Article 8 states that they must have procedures in place to verify the effectiveness of official controls, to ensure effectiveness of corrective action and to update documentation where needed.

## **Findings**

The verification of official controls for both the use of PPPs and pesticide residues is based on the check of annual reports and the check of inspection reports chosen randomly. Representatives of the FISs visited by the FVO team explained that in addition, the management staff at provincial level also check the progress on control activities in the computerised system on a regular basis. Three times a year they also prepare a table of comparison about the number of controls planned, including the number of samples taken for pesticide residues and the number of controls performed. This data is forwarded to the CCA and AGES and discussions take place during regular organised meetings. In addition, management staff from the regional CAs perform on-site visits at branch offices in the districts and accompany food inspectors for inspections.

According to the information provided in the CP of Austria: [http://ec.europa.eu/food/fvo/country\\_profiles\\_en.cfm](http://ec.europa.eu/food/fvo/country_profiles_en.cfm), an internal audit system has been introduced in the food sector by the provinces, under the co-ordination of the BMG, since 2006. In 2009, audits were extended to other control areas such as FAO, animal health, animal welfare and feed. At present, official controls of pesticide residues are within the scope of the internal audits performed at provinces. Although the scope of internal audits has been extended, official controls on the use of PPPs are still not covered. Neither CAs nor the delegated control bodies in charge of these controls are subject to audits.

Internal audits are planned in advance. The current audit cycle of 2 years is in the process of being changed to 3 years from 2012. More details about internal audits are to be found in the CP of Austria: [http://ec.europa.eu/food/fvo/country\\_profiles\\_en.cfm](http://ec.europa.eu/food/fvo/country_profiles_en.cfm).

Both provinces visited, Tirol and Vienna were subject to audit in 2009. As the audit scope is considered on the basis of risk assessment, official controls of pesticide residues were not within the scope of the last audits performed in these Provinces. However, audit reports were submitted to the audit team from the Provinces of Lower Austria and Salzburg as an example, where official controls of pesticide residues were within the scope of the audit.

## **Conclusions**

In accordance with Article 8 (3), procedures are in place for verification of the effectiveness of official controls performed for both use of PPPs and pesticide residues.

A system for internal audits in the food sector has been established, as required by Article 4 (6) of Regulation (EC) No 882/2004. However, official controls on the use of PPPs are not included in the scope of the internal audits performed in the Provinces.

### **5.3 RAPID ALERT SYSTEM FOR FOOD AND FEED**

#### **Legal Requirements**

Article 50 of Regulation (EC) No 178/2002 requires MSs to immediately notify any information relating to the existence of a serious direct or indirect risk to human health deriving from food, to the Commission under the RASFF.

Regulation (EU) No 16/2011 laying down implementing measures for the RASFF.

#### **Guidelines**

Draft Guidance Document (SANCO/3346/2001/rev.7) on Notification Criteria for pesticide residue findings to the Rapid Alert System for Food and Feed (RASFF).

#### **Findings**

The AGES Competence Centre in Salzburg is the national contact point for the EU RASFF. A SOP on operation of RASFF was developed (last up-date by AGES in 2009) and is part of the Quality Manual in place. In addition, RASFF contact points have been nominated at the FISs in all 9 Provinces.

Both official laboratories for pesticide residues follow SANCO Guidelines on Method Validation and Quality Control Procedures for pesticide residues analysis in food and feed, (Document SANCO/10684/2009) regarding measurement uncertainty. For the decision on non-compliance, the default value of 50 % is applied as specified in the SANCO Guidelines.

In the event of MRLs being exceeded, a risk assessment is performed by authorised AGES staff members from the Food Control Division in Innsbruck. An expert opinion is always provided as part of the analytical report. Draft Guidance Document (SANCO/3346/2001/rev.7) on Notification Criteria for pesticide residue findings to the RASFF is followed. In the case when a direct or indirect risk has been identified for human health, notifications are drafted by the contact person in the relevant Province and sent to the national contact point. The national contact point is responsible for communicating the information to the EC.

In 2009, 28 samples of fresh fruit and vegetables were found to be non-compliant. In 5 of the cases, a risk for the consumers has been identified, and these were notified via the EU RASFF.

Files were provided by the CAs on several cases of non-compliances notified via the EU RASFF. A uniform approach was followed by the staff members involved.

#### **Conclusions**

A national contact point for the EU RASFF has been designated and non-compliances related to pesticide residues considered to be a direct or indirect risk to human health are notified via the EU RASFF as required by Article 50 of Regulation (EC) No 178/2002.

Notification of pesticide residue findings is performed in accordance with Draft Guidance Document (SANCO/3346/2001/rev.7) on Notification Criteria for pesticide residue findings to the Rapid Alert System for Food and Feed (RASFF).

## 6 OVERALL CONCLUSION

CAs and their responsibilities are clearly defined. Legal requirements are in place for sanctions to be imposed and enforcement measures to be taken in the case of non-compliances identified in the areas of PPPs and pesticide residues. However, no clear evidence was provided that sanctions applied are effective, proportionate and dissuasive as laid down in Article 55 of Regulation (EC) No 882/2004. Although an internal audit system is in place in the food sector, official controls on the use of PPPs are not within the audit scope so as to ensure full compliance with the requirements of Article 4 (6) of the same Regulation.

Comprehensive controls take place on the use of PPPs. However, inspections at growers are performed with prior warning which is not in compliance with the requirements of Article 3 (2) of Regulation (EC) No 882/2004.

Official controls on pesticide residues are performed in accordance with the existing annual control programmes. Although a multi-annual control programme has been established, its content is not fully in compliance with the requirements of Article 30 of Regulation (EC) No 396/2005. A broad analytical scope is in place in the official laboratory for pesticide residues in Innsbruck where all samples under the national and EU co-ordinated control programme are analyzed. Currently, the analytical scope covered in the second official laboratory in Vienna does not allow analyzing of all pesticides listed in Annex I to Regulation (EC) No 915/2010 and the full range of pesticides authorized for placing on the market and use in the country.

## 7 CLOSING MEETING

A closing meeting was held on 10 June 2011 with representatives of the CCA, AGES and PPSs of both provinces visited by the audit team. At this meeting, the FVO team presented the main findings and preliminary conclusions of the audit. The representatives of the CAs offered some initial comments and provisionally accepted the findings.

## 8 RECOMMENDATIONS

The CAs are invited to provide details of the actions taken and planned, including deadlines for their completion ('action plan'), aimed at addressing the recommendations set out below, within 25 working days of receipt of this audit report. The CAs should:

N°.	Recommendation
1.	Ensure that audits or inspections are performed at the control bodies in charge of official controls on the use of PPPs as required by Article 5 (3) of Regulation (EC) No 882/2004.
2.	Ensure that inspections at growers are carried out without prior warning as laid down in Article 3 (2) of Regulation (EC) No 882/2004.
3.	Ensure that the multi-annual national control programme for pesticide residues established contains at least the information listed in Article 30 (1) (a), (b), (c) and (d)

N°.	Recommendation
	of Regulation (EC) No 396/2005.
4.	Ensure that all official laboratories for pesticide residues are able to analyse the pesticides listed in Annex I to Regulation (EC) No 915/2010 and the full range of pesticides authorised for placing on the market and use in the country.
5.	Ensure that sanctions applied in the case of infringement are effective, proportionate and dissuasive as provided for in Article 55 of Regulation (EC) No 882/2004.
6.	Ensure that the scope of internal audits is extended in order to cover official controls on the use of PPPs, so as to ensure full compliance with the requirements of Article 4 (6) of Regulation (EC) No 882/2004.

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

[http://ec.europa.eu/food/fvo/ap/ap\\_at\\_2011-8988.pdf](http://ec.europa.eu/food/fvo/ap/ap_at_2011-8988.pdf)

## ANNEX 1 - LEGAL REFERENCES

Legal Reference	Official Journal	Title
<i>Horizontal Legislation</i>		
Reg. 178/2002	OJ L 31, 1.2.2002, p. 1-24	Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety
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. 852/2004	OJ L 139, 30.4.2004, p. 1, Corrected and re-published in OJ L 226, 25.6.2004, p. 3	Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs
Reg. 16/2011	OJ L 6, 11.1.2011, p. 7-10	Commission Regulation (EU) No 16/2011 of 10 January 2011 laying down implementing measures for the Rapid alert system for food and feed
<i>Legislation on Plant Protection Products</i>		
Dir. 91/414/EEC	OJ L 230, 19.8.1991, p. 1-32	Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market
Dir. 79/117/EEC	OJ L 33, 8.2.1979, p. 36-40	Council Directive 79/117/EEC of 21 December 1978 prohibiting the placing on the market and use of plant protection products containing certain active substances
<i>Legislation on Pesticide Residues</i>		
Reg. 396/2005	OJ L 70, 16.3.2005, p. 1-16	Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on

<b>Legal Reference</b>	<b>Official Journal</b>	<b>Title</b>
		food and feed of plant and animal origin and amending Council Directive 91/414/EEC
Dir. 2002/63/EC	OJ L 187, 16.7.2002, p. 30-43	Commission Directive 2002/63/EC of 11 July 2002 establishing Community methods of sampling for the official control of pesticide residues in and on products of plant and animal origin and repealing Directive 79/700/EEC
Reg. 915/2010	OJ L 269, 13.10.2010, p. 8-18	Commission Regulation (EU) No 915/2010 of 12 October 2010 concerning a coordinated multiannual control programme of the Union for 2011, 2012 and 2013 to ensure compliance with maximum levels of and to assess the consumer exposure to pesticide residues in and on food of plant and animal origin
Dir. 2006/125/EC	OJ L 339, 6.12.2006, p. 16-35	Commission Directive 2006/125/EC of 5 December 2006 on processed cereal-based foods and baby foods for infants and young children (Codified version)
Dir. 2006/141/EC	OJ L 401, 30.12.2006, p. 1-33	Commission Directive 2006/141/EC of 22 December 2006 on infant formulae and follow-on formulae and amending Directive 1999/21/EC

**ANNEX 2 – STANDARDS QUOTED IN THE REPORT**

Reference number	Full title	Publication details
SANCO/10684/2009	Method Validation and Quality Control Procedures for pesticide residues analysis in food and feed, Document SANCO/10684/2009.	<a href="http://ec.europa.eu/food/plant/protection/resources/qualcontrol_en.pdf">http://ec.europa.eu/food/plant/protection/resources/qualcontrol_en.pdf</a>
SANCO/3346/2001/rev.7	Notification Criteria for pesticide residue findings to the Rapid Alert System for Food and Feed (RASFF), Document SANCO/3346/2001/rev.7	<a href="http://ec.europa.eu/food/plant/protection/pesticides/docs/rasff_pest_res_en.pdf">http://ec.europa.eu/food/plant/protection/pesticides/docs/rasff_pest_res_en.pdf</a>