OVERVIEW REPORT OF A SERIES OF AUDITS CARRIED OUT IN 2010 AND 2011 IN CERTAIN MEMBER STATES
IN ORDER TO ASSESS THE OFFICIAL CONTROL SYSTEMS IN PLACE FOR IMPORT CONTROLS ON FOOD OF NON-ANIMAL ORIGIN
EXECUTIVE SUMMARY

This is an overview report on a series of 12 audits to the Member States (MS) undertaken between 2010 and 2011 by the European Commission's Food and Veterinary Office (FVO). The aim of this series was to evaluate implementation of the official control systems in place for import control of food of non-animal origin (FNAO) in accordance with Union law.

Since the coming into force in 2010 of Regulation (EC) No 669/2009, on increased level of official controls for feed and food of non-animal origin (FNAO), MSs undertook satisfactory steps to implement it. It has proven its value as a flexible instrument of monitoring together with national surveillance and monitoring systems and EU emergency measures. Clear cooperation and communication between the CAs is in place in MSs and there is sufficient staff available for import controls of FNAO. Documented procedures are well developed, despite not always being updated.

Some shortcomings were identified during the series. The onward transportation under Regulation (EC) No 669/2009 and transfer of goods under Regulation (EC) No 1152/2009 did not always guarantee full traceability in particular when several MSs were involved. The prior notification requirement is not often followed. In half of the MS Customs release did not always follow correctly the procedures established by EU regulations. These deficiencies may lead to the situation where goods are released without the finalised checks.

The costs for controls and sampling vary widely between MS. The systems of laboratory analyses improved, but particular deficiencies in implementation of specific analytical requirements of EU legislation were often detected.

The nature of deficiencies noted during this series of missions did not give rise to health concerns that would require urgent action. Those recommendations from the previous series which needed to be further addressed were revised or repeated in the current series of audits and additional recommendations were made to address any other deficiencies identified.
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# ABBREVIATIONS & DEFINITIONS USED IN THIS REPORT

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<tbody>
<tr>
<td>ARfD</td>
<td>Acute Reference Dose</td>
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<tr>
<td>BIP</td>
<td>Border Inspection Post</td>
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<td>CA</td>
<td>Competent Authority</td>
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<td>CCA</td>
<td>Central Competent Authority</td>
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<td>CED</td>
<td>Common Entry Document</td>
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<td>CP</td>
<td>Control Point</td>
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<td>DG SANCO</td>
<td>Health and Consumers Directorate-General</td>
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<tr>
<td>DPE</td>
<td>Designated Point of Entry</td>
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<td>DPI</td>
<td>Designated Point of Import</td>
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<tr>
<td>EC</td>
<td>European Community</td>
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<td>EU</td>
<td>European Union</td>
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<td>FBO</td>
<td>Food Business Operator</td>
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<td>FNAO</td>
<td>Food of Non–Animal Origin</td>
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<td>FPI</td>
<td>First Point of Introduction</td>
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<td>FVO</td>
<td>Food and Veterinary Office</td>
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<td>ISO</td>
<td>International Organisation for Standardisation</td>
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<td>MRL</td>
<td>Maximum Residue Level</td>
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<td>MS</td>
<td>Member State(s)</td>
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<td>NRL</td>
<td>National Reference Laboratory</td>
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<td>OT</td>
<td>Onward Transportation</td>
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<td>PCP</td>
<td>Pentachlorophenol</td>
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<td>RASFF</td>
<td>Rapid Alert System for Food and Feed</td>
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<tr>
<td>SCOFCAH</td>
<td>Standing Committee of the Food Chain and Animal Health</td>
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<td>TC</td>
<td>Third Country</td>
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1. INTRODUCTION

This series of audits was undertaken in 2010 and 2011 by the Food and Veterinary Office (FVO) of the European Commission's Directorate-General for Health and Consumers (SANCO). The series consisted of 12 audits targeted at import controls on products of non-animal origin (FNAO). Five more audits are planned for 2012. The series involved meetings with the central and regional/local Competent Authorities (CA) responsible for Designated Points of Entry and Import (DPEs/DPIs), visits to the importers, and official laboratories undertaking official analysis of mycotoxins, pesticides and Sudan Dyes.

Reports on individual audits are available on SANCO's website: http://ec.europa.eu/food/fvo/index_en.htm

Details on specific reports are available in Annex I.

2. OBJECTIVES OF THE SERIES OF AUDITS

The objectives of the audits were to evaluate the implementation of EU legislation in relation to import controls of food of non-animal origin (FNAO), in particular:

- implementation of Regulation (EC) No 669/2009 on increased levels of import controls;
- requirements for official controls of Regulation (EC) No 882/2004; implementation of the Rapid Alert System for Food and Feed (RASFF);
- Follow-up recommendations of previous audits.

3. LEGAL BASIS FOR THE AUDITS

The audits were 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.

A full list of the legal instruments referred to in this report is provided in the Annex II and refers, where applicable, to the last amended version.

4. BACKGROUND

4.1. Summary of previous FVO audit series results

A previous series of audits on import control of FNAO was carried out by the FVO between 2002 and 2005 to major importing MS, in order to assess controls at import on FNAO. This series identified weak controls at import in some MS. The second series of missions was undertaken between 2006 and 2008 and it covered MS not included in the first series and the follow-up of previous missions. The scope of these series of missions covered the implementation of Regulations (EC) No 882/2004 and No 178/2002, and the implementation of Commission Decisions imposing special conditions on the import of certain products concerning mycotoxin contamination and Sudan dye adulteration.

The overview reports of these two series of audits are available on the Health and Consumers Directorate General (DG SANCO) Internet site at:

4.2. Increased level of official controls and emergency measures

Based on Article 15(5) of Regulation (EC) No 882/2004, Regulation (EC) No 669/2009 requires MS to carry out an increased level of official controls on imports of certain feed and FNAO from specific Third Countries (TCs). This Regulation introduces a set of uniform rules for performing official checks on food and feed imports of non-animal origin and marks a significant re-enforcement of the EU framework on import controls for FNAO. The imported products listed in Annex 1 of this Regulation require an increased level of attention and control at borders, on the basis of information from various sources (RASFF notifications, reports from the FVO, MS and TCs). The enhanced control mechanism means 100% checks on documents accompanying the consignments, as well as physical checks, including laboratory analysis, at a frequency related to the identified risk.

In further cases specific Commission Decisions on emergency measures were adopted on the basis of Article 53(1)(b)(ii) of Regulation (EC) No 178/2002. In 2009 and 2010 these Decisions were replaced by Regulations (1152/2009, 1151/2009, 258/2010). They refer to the following risks:

- mycotoxins in different foodstuffs such as groundnuts, nuts, dried fruit, and derived products from different TC. Mycotoxins are naturally occurring metabolites produced by certain species of moulds (e.g. *Aspergillus* spp, *Fusarium* spp) and are a very significant risk to health;
- sunflower oil originating from Ukraine which was found contaminated with high levels of mineral oil in 2008;
- guar gum and its food and feed compounds containing at least 10% originating in or consigned from India contaminated by pentachlorophenol (PCP) and dioxins. The RASFF received in 2007 a notification from a MS concerning a finding of a serious contamination by dioxins and PCP in guar gum originating from India. On investigation this was found to be not an isolated case but rather symptomatic of a generalised problem.

These Regulations specify official controls to be carried out by MSs such as documentary, identity and physical checks including sampling with a specific frequency. They define the places where controls should take place. These places are defined and named differently, and in some cases they have to meet specific requirements. Products from TC under emergency measures must be accompanied by specific certificates laid down in legislation and then subjected to official controls.

5. FINDINGS AND CONCLUSIONS

5.1. Relevant national legislation

Findings

In two out of twelve MS visited no additional national legislation was in place for import controls of FNAO.

In seven MS national legislation is in place to implement provisions of EU legislation, such as fees, designation of DPEs and description of responsibilities. In five MS specific legal provisions are in place for import controls of products not covered by harmonised EU legislation e.g. list of risk products, specific procedures, prior-notification requirements.

In all MS Competent Authorities (CAs) are designated for the transposition and publication of relevant legislation.
Conclusions
In most MS additional national legislation is in place. It either supports implementation of provisions of EU legislation or provides for national rules on import controls of FNAO not covered by harmonised EU legislation.

5.2. Organisation and Implementation of Official Controls

5.2.1. Designation of Competent Authorities

Findings
In five MS import controls are carried out by two different services responsible for food and feed. In five other MS control tasks are delivered by one service, which is also responsible for import controls of products of animal origin. These controls are combined with the phytosanitary and quality checks in some countries. In one of these MS sampling for pesticides residues is the responsibility of the CA charged with pesticides controls.

In two MS Customs are also involved in import controls. They perform documentary or/and identity and physical checks for FNAO in accordance with specific EU Regulations.

In one federal MS the designation of CAs is the responsibility of the federal States.

Conclusions
All MS visited have adequately designated CAs for official control of import of FNAO. In most cases one or two CAs are involved in import controls. In two MS Customs are directly involved in these control activities.

5.2.2. Co-operation between and within Competent Authorities

Findings

Cooperation between CAs involved in import controls
Where different CAs are involved in import controls of FNAO, cooperation is established by meetings, procedures, e-mail and telephone. In one MS a lack of cooperation between the different CAs was identified regarding the shared use of laboratories and DPE facilities.

Cooperation with the Customs
In nine MS visited CAs have a written agreement with the Customs or, alternatively, cooperation procedures are in place. Other MS cooperate via working group meetings, training or direct local contacts. In two MS deficiencies were observed in this cooperation between the CAs and Customs. In addition, as described in section 5.2.17, a lack of communication with Customs in cases of non-compliance was observed in two MS.

Internal coordination
In general, internal coordination within the CAs is well established. It is achieved by training, internal procedures, instructions, direct contact between central and local level and IT systems which help disseminate and update information. In two MS a less efficient internal coordination within Customs was identified.
Conclusions
The internal coordination within and between CAs works well. Some deficiencies were observed mainly in relation to the cooperation and communication between CAs and Customs (see also section 5.2.17).

5.2.3. Resources for Performance of Controls

Findings
No major problems with staffing, facilities\(^1\) or equipment were observed in the visited MSs. In one DPE staffing deficiencies were noted during peak times. In the visited DPIs/DPEs in three MS additional staff were employed, or existing staff re-deployed, to ensure that adequate import controls are carried out.

In half of the MS visited, problems with training of staff were identified, mainly on up-to-date sampling methods and import procedures such as documentary checks. In one of the MS visited, laboratory staff had not obtained sufficient training. In one MS deficiency in training/guidance in Customs was identified.

Conclusions
The facilities and staffing are adequate in most of the MS visited.
In half of the MS visited insufficient training was identified, in particular on sampling, import procedures and documentary checks.

5.2.4. Designated Points of Import (DPI) and Designated Points of Entry (DPE)

Findings
Regulations (EC) No 669/2009 and 1152/2009 introduce different concepts of places of controls. Regulation (EC) No 669/2009 requires all checks (documentary, identity and physical) to be conducted at the DPE, and these controls are carried out at the EU borders. As a result, DPEs are located at a port, airport or land border crossing. In the case of Regulation (EC) No 1152/2009 controls are linked with the place of importation/customs release which can be located at the border or inland. The documentary checks must be done at the First Point of Introduction (FPI) which is the point of the first physical arrival of a consignment in the EU (similar to DPE). The consignment can be then transferred to the DPI, which according to the definition is any point designated by the CA through which the foodstuffs may be imported into the EU. In many cases import takes place where the consignment arrives (e.g. port, airport), therefore the FPI is often designated as DPI as well.

In both cases, DPE and DPI shall meet the specific requirements in relation to staffing, training, condition of sampling and storage of consignments. In the case of DPE, if it does not meet these requirements five years derogation is envisaged (ending 13 August 2014), and MSs can designate Control Points (CP) within their own territory where identity and physical checks are carried out. This concept is similar to the FPI-DPI procedures under Regulation (EC) No 1152/2009, however with the difference that it provides that the DPI can be located anywhere in the whole EU territory, while the CP has to be designated in the particular MS’ territory which applies transitional measures.

\(^1\) This chapter refers to the facilities such as inspection equipment, offices, IT equipment. The facilities of the DPEs/DPIs are described in the section 5.2.4.
In ten out of twelve of the MS visited, DPEs and DPIs were designated. In one MS all controls were carried out in CPs. In another MS no DPI had been designated at the time of the audit and the controls were carried out by the local CA at the importers premises.

In the MS visited most DPEs are located in the ports or airports and there are only a few at the road border crossings. In the majority of MS, there are no CA facilities specialised for the physical control and storage of FNAO similar to the controls carried out at veterinary Border Inspection Posts (BIP) on products of animal origin. This reflects the historic focus on live animals and animal products as being of higher risk than FNAO. In several cases the veterinary BIP facilities are used also for identity and physical checks on FNAO as well as other facilities such as customs warehouses, transit sheds and importers' premises. These premises are located in the port or airport area.

In all cases lists of DPEs were made publicly available on the CAs websites and communicated to the Commission services. Some MS indicate their location (e.g. name of the port) or the location and the CA carrying out the controls, while others also provide a list of all the customs or importers' facilities where the controls are carried out.

In eight MS all or most of DPIs are the same as DPEs. However, in half of the MS some or all DPIs consist of local CAs + importer's/customs warehouse at the point of importation of goods (inland). This is to comply with Article 7 (3) of Regulation (EC) No 1152/2009, which states that consignments may be transferred from the FPI to DPIs located inland.

The list of DPIs is published by MS on the CAs websites. In three MS this list did not fully correspond to the places where identity and physical checks are carried out. Customs offices or only the CAs were listed as DPIs and not the place of identity and physical checks. In such cases these controls were conducted in the importers premises or customs warehouses located inland; however, this information was not included or updated on the DPIs lists, and no information was given indicating which CA is responsible for these controls.

At the main FPI of Turkish products the CA had difficulties in accessing the lists of DPIs in other MS. Often CA accepted further transport of consignments to the point of destination without information on the final DPI indicated on the documents (e.g. Common Entry Document (CED) indicated only the name of a MS, or the name of a city to which the consignment was bound). The EU legislation does not foresee a publication of the list of DPIs by the Commission on its website, as is the case for DPEs. The list of DPIs is included in the annex of the 'Guidance document for CAs for the control of compliance with EU legislation on aflatoxins' of DG SANCO, but some information and links are obsolete. The previous Decision repealed by Regulation (EC) No 1152/2009 had listed all DPIs in its annex.

Control Points

Based on the derogation described in Article 19 of Regulation (EC) No 669/2009, four out of twelve MS visited had designated CPs for a transitional period of five years. In two of these MS all the controls, including the documentary checks\(^2\) are carried out in the CPs. In a third MS all documentary checks are carried out at the DPEs at the border, but the other checks are performed at the CPs located in importers/customs warehouses. A fourth MS has two CPs located inland which it uses occasionally. In two MS the list of CPs did not always correspond to the real situation.

\(^2\) Article 19 of Regulation (EC) No 669/2009, only allows the CPs to be designated of identity and physical checks.
Conditions at the DPIs/DPEs/CPs

In general the visited DPEs, CPs and DPIs met the requirements of Article 4 of Regulation (EC) No 669/2009 and Article 6 of Regulation (EC) No 1152/2009, respectively. The main problems identified concerned outdated procedures and training of staff as described in section 5.2.3 and 5.2.16. In one MS deficiencies in staffing and conditions for storage of products under Regulation (EC) No 1152/2009 during peak time of import were observed.

The hygienic conditions at places where the checks were carried out were insufficient in some DPIs/DPEs (four MS). In one MS a private warehouse was used as a DPI where consignments were unloaded, stored and sampled by the CA, but it was neither registered nor subject to official controls.

Shared use of facilities at the BIPs/DPEs

Some DPEs and/or DPIs share facilities with the veterinary BIPs, and in two MS problems with hygienic conditions were identified in these places, as described above.

Conclusions

In most MS DPEs and DPIs are designated, their lists are made publicly available and communicated to the Commission. They are listed differently by MS and sometimes only names of ports/airports are indicated which could lead to miscommunication and failure of traceability.

In a quarter of the MS the published DPI lists do not correspond to the real places where controls are conducted.

In a third of the MS, problems with hygienic conditions in these places were identified.

In three out of four MS using the derogation under Article 19 of Regulation (EC) No 669/2009 CPs were not designated in line with this Article.

In most cases DPEs and DPIs visited (including private premises) were in compliance with the provisions of Article 4 of Regulation (EC) No 669/2009 and Article 6 of Regulation (EC) No 1152/2009 respectively. Shortcomings with procedures and training were identified and are described in section 5.2.3. and 5.2.16.

BIPs facilities are used in some MS as places of controls of FNAO

5.2.5. Other Places of Import Controls

Findings

Three MS importing guar gum have not designated CPs or the list of CPs was not available to the public. One MS stated that they do not receive such consignments and considered designation of CPs unnecessary. Other MS designated CPs at the DPEs, DPIs and/or BIPs. However these controls may also be performed at the importers’/customs warehouses. Regulation (EU) No 258/2010 on guar gum gives no definition for CPs.

Similarly Ukrainian sunflower oil is controlled in different places before importation and customs release, at the DPEs/DPIs and often in the importers/customs warehouses. Regulation (EC) No 1151/2009 does not define any particular place for controls.

Conclusions

In the majority of MS CPs are designated and made publicly available. Problems with designation were identified in a quarter of the MS visited.
5.2.6. Prior Notification of Consignments

Findings
In most of the MS prior-notification by importers of consignments is in place; however in six MS deficiencies were detected. In four MS importers did not give a prior notification of at least one day before arrival to the CAs, and only did so on or after the day of arrival. In another two MS visited in early 2010 a CED was not always used for the prior-notification of products subject to Regulation (EC) No 1152/2009.

In five MS electronic systems are used for prior-notification. In case of Regulations (EU) No 258/2010 and 1151/2009 a prior-notification is compulsory, but a CED is not obligatory, nevertheless seven MS use a CED or a comparable national notification form for this purpose.

A requirement to inform the CAs before the customs release of products beyond the scope of specific EU Regulations is in place in four MS. The CED or a national notification form may be used for this purpose.

Conclusions
In half of the MS visited the prior notification requirements of EU legislation were not fully adhered to, which may impede planning of swift checks.

In more than half of the MS the CED or national notification forms may be used for prior-notification of products subject to Regulations (EU) No 258/2010, 1151/2009 and/or other foodstuffs subject to national rules for import controls.

In five MS electronic systems are used which facilitate importers to comply with the prior-notification requirements. This is seen as a good practice in the MS.

5.2.7. Import Controls of Food of Non-Animal Origin subject to Regulation (EC) No 669/2009

Findings
In most of the MS documentary, identity and physical checks of products subject to Regulation (EC) No 669/2009 were carried out in a timely and adequate fashion (see also section 5.2.14). In one MS some problems with identity checks were observed, due to deficiencies in training of the inspector.

Commercial documents supporting CED required from the importer differ between MS. Usually invoices may be accepted, but also bills of lading, airway bills, cargo manifests and phytosanitary certificates may be submitted. In one MS no additional documents are required to assist CED. In most MS CEDs are delivered printed in paper version after the notification. In one MS the CED is electronically submitted to the Customs and the documentary check is done automatically by the IT system on the completeness of data filled in the CED, but not the content. To verify the content a cross-check is possible with the data delivered to the customs IT systems.

CEDs are accepted by the CAs in the language of the MS as well as in English, French and German.

Onward Transportation pending the results of physical checks
Regulation (EC) No 669/2009 requires that all controls shall be carried out at the DPE. The CA, however, in order to avoid delays and/or to prevent deterioration of sensitive cargos, may authorise the Onward Transportation (OT) from the DPE to another place awaiting the results of the physical checks. This place can be in any MS. The consignment will be transported to
the final destination with an incomplete CED and must stay under customs procedures. Where such OT is granted, the CA at the DPE shall notify the CA at the point of destination. There must be arrangements in place to ensure that the consignment remains under the continuous control of the CAs and cannot be tampered with in any manner pending the results of the physical checks. A certified copy of the original CED shall be issued and the original of the CED shall accompany the consignment on its OT until it reaches its destination as indicated in the CED.

Half of the MS allowed the OT within the country and/or to other MS.

When OT is allowed within the MS the DPE always informs the local CA responsible for supervision of the final destination of the consignment. In one MS internal procedures require detention of the consignment by the CA at the final destination until the final original CED is issued. In one MS the CA at the DPE seals the consignment for OT. In another MS the DPE approved the importers for which OT may be authorized. In yet another MS action of the local CA is only required in case of non-compliances.

In case of the OT of a consignment with the final destination in another MS, the CA at the final destination must be informed. Some MS require a feedback from the CA at the destination; others require prior approval from the MS of destination for this procedure. Other MS only informed the CA at the destination and did not require any feedback on the actions taken. One MS authorised OT of products from Turkey to another MS, but it did not inform CAs in these MS, which is not in compliance with legislative requirements. The MS only notified the RASFF when analytical results indicated a non-compliance, and the final CED was issued. This caused problems for local CAs in another MS, which either did not take any action, or applied national control procedures which may result in a duplication of controls. In 2011 the EC established a list of contact points for OT in all MS to facilitate the communication between them.

Most of the MS allowing OT followed the procedures required by Article 8 of Regulation (EC) 669/2009 for issuing the original and the certified copy of the CED. Nevertheless, in two MS non-compliances were identified. A DPE in one MS, while allowing the OT pending analytical results, did not issue a certified copy of the CED which should accompany the consignment. The CA explained that the reason for this was to prevent the consignment being released by customs based on the incomplete CED. In another MS, the operational procedure required that the CA at the final destination of the consignment should issue the final original CED based on the analytical results delivered by the DPE, in contradiction to Article 8 of Regulation (EC) No 669/2009.

Evidence was found in several MS that the Customs release consignments accompanied by incomplete CEDs (see also section 5.2.9).

Conclusions

Documentary, identity and physical checks are usually performed in compliance with Regulation (EC) No 669/2009.

Different documents assisting the CED may be required by MS, as EU legislation does not specify commercial documents to be submitted by the importer.

In most of the visited MS (7) OT was authorised by the DPEs. Due to the different interpretations of the requirements set out in Article 8 of Regulation (EC) No 669/2009 different procedures for OT are established by MS, and in three countries they were not always fully in compliance with this Article.

It is a good practice in some MS to require a prior approval for OT from the CA of the MS of destination of the consignment.
5.2.8. Import Controls of Food of Non-Animal Origin Subject to Emergency Measures

Findings
In most of the MS identity and physical checks of products subject to Regulation (EC) No 1152/2009 were carried out in line with the legislation (see also section 5.2.14). In five MS problems with documentary checks of these products were identified. They concerned cases when:

- products were consigned from Turkey, but produced in another TC. The health certificates did not include all relevant information as required (one MS);
- Inspectors at the DPIs were not aware of some requirements of health certificates and analytical reports (two MS);
- Lack of analytical report, errors in date of validity, no reference to the health certificate on the CED (one MS);
- More than one lot of products of the same origin and type, but with different health certificates were accepted on one CED (one MS);
- As mentioned in section 5.2.4, Regulation (EC) No 1152/2009 defines FPI and DPI. The FPI is the place of the first physical introduction of a consignment into the EU and the DPI is the place where products may be imported. The CA at the FPI shall authorise the transfer of the consignment to a DPI after a favourable completion of documentary checks. The original certificate shall accompany the consignment during such transfer. At one main FPI in a MS, the CEDs for Turkish products were commonly accepted for further transfer to other MS without a clear indication of the DPI of the consignments' destination. The consignments could therefore arrive at any private premises in another MS which were not a DPI, and no further checks would be carried out. The CA admitted they did not have access to the lists of all the DPIs in MS (see also section 5.2.4). Such cases where products arrived at the importers (not DPIs), and were released without finalised checks, were observed in two MS.

Documentary, identity and physical checks of guar gum from India and sunflower oil from Ukraine were considered satisfactory. However, these products were not imported at all visited places and verification of the results of official controls was not always possible. In one MS it was observed that products with guar gum content between 10 and 100% were not included in the sampling programme.

Conclusions
In almost half of MS visited problems were identified with documentary checks of FNAO subject to Regulation (EC) No 1152/2009, although they were significant only in a few cases (see also section 5.2.4).

No significant problems were identified concerning checks of FNAO subject to Regulation (EC) No 1151/2009, Regulation (EU) No 258/2010.

5.2.9. Customs Release for Free Circulation

Findings
In half of the visited MS problems were identified with the customs release. It mainly concerned products subject to Regulations (EC) No 669/2009 and 1152/2009, but inadequate release of guar gum from India and sunflower oil from Ukraine was also observed in these MS.
In some MS with an electronic clearance system, the release was based on the CED number and Customs only rarely verify the CED presented by the importers. It resulted in situations where goods were released based on incomplete CEDs or their certified copies. Some products were not included in the customs risk profiles. In two MS consignments were often released by Customs before the physical checks were finalised, however products were detained by the CAs until the checks were completed. In one MS customs could not ensure that FNAO imported under the simplified Customs procedure would only be released after all checks are finalised and CED issued.

Conclusions

In half of the MS Customs release did not always follow adequate procedures, contrary to EU regulations. This can lead to a release of consignments without adequate checks by the CAs.

5.2.10. Sampling Frequency

Findings

The selection of consignments for physical checks is usually done at the DPE/DPI level. In four MS no problems were observed concerning sampling frequency.

Due to the quarterly revisions of Annex I of Regulation (EC) No 669/2009, MS need to observe new developments and adapt their resources very quickly. At the beginning of the implementation of Regulation (EC) No 669/2009 some MS had problems with adjusting their resources to the volume of controlled consignments which resulted in too low sampling frequencies. This situation has improved gradually. However, half of the MS visited did not meet sampling frequency for some products (mainly vegetables from Turkey, Thailand, fruit and vegetables from the Dominican Republic and also dried spices from India and chili/chili products from all TC). DPEs at airports and road crossings encountered more problems with the frequency of physical checks than DPEs in ports. This was due to the nature of transport and staffing problems. At airports the high volume of import of small size consignments and the surrender of such consignments by importers when they were selected for physicals checks made it difficult to comply with the sampling frequency. The reason importers surrendered their goods was because the costs for the checks of small consignments was higher than the value of the product.

In three MS problems with meeting the sampling frequency for products subject to Regulation (EC) No 1152/2009 were observed. In one case the frequency was much higher than required by legislation for no particular reason. One of these MS did not take the number of samples required by other emergency measures.

Deficiencies in sampling frequency were often linked to ineffective verification procedures and internal audits by the CAs (see 5.2.18).

MS are required to report quarterly to the European Commission results of controls required by Regulations (EC) No 1152/2009, 669/2009 and 258/2010. Data on controls of products subject to Regulation (EC) No 1151/2009 do not have to be reported. Timely reporting of comprehensive data on Regulation (EC) No 669/2009 was observed in all MS. Reporting for Regulations (EC) No 1152/2009 and 258/2010 was not always on time, and in one case quarterly reports were not sent at all.

In case of Regulation (EC) No 669/2009 it is required that identity and physical checks are carried out in such a way that it is not possible for the food business operators (FBOs) to predict whether any particular consignment will be subjected to such checks. On the other hand Article 16 of Regulation (EC) No 882/2004 provides risk criteria for frequency of physical checks where previous non-compliance for product and FBO was found. In most MS
random calculation charts were used to meet this requirement and to decide on the sample to be taken. One MS uses dice and drew lots. In three other MS inspectors are supported by IT tools which decide on samples to be taken. However in some MS, the previous history of non-compliances is also taken into account. Two MS sampled a fixed number of consignments of the same product from the same exporting company after a non-compliant result\(^3\) (e.g. 10 following consignments would be sampled within the required frequency, which is similar to the practices for veterinary imports. The Commission services formally invited the MS to correct this practice).

**Conclusions**

To meet the sampling frequency of products subject to Regulation (EC) No 669/2009 was more problematic for MS than in the case of emergency measures. In particular DPEs at the airports are struggling to meet the sampling frequency, as they receive high numbers of small consignments of perishable products often of low value.

Reporting of control data to the European Commission is implemented timely by MS in the case of Regulation (EC) No 669/2009 but to a lesser extent for emergency measures.

There are different approaches on choosing consignment for sampling to meet the sampling frequency. In some cases the history of previous non-compliances is taken into account, whereas other MS take samples randomly.

To meet the sampling frequency three MS have a good practice of using IT tools for selection of consignments for physical checks.

### 5.2.11. Import Controls Beyond Specific EU requirements

**Findings**

Products from TC are usually subject to national control and sampling programmes in MS. Based on risk assessment samples are taken from the market, often focusing on importers.

In eight MS FNAO outside Regulation (EC) No 669/2009 or emergency measures are controlled at the importation/before release by Customs. One MS drafted national legislation to carry out controls before release. Such controls do not cover products in transit procedures to another MS.

In four MS national legislation requires that importers, before the customs release, must first notify the CA and present specific documents to them in advance. In two of these MS all imported FNAO must be notified to the CAs. In other MS, the CA identifies products subject to import controls/sampling by checking manifests, phytosanitary certificates, shipping lists etc.). Such controls are often done while CA carries out veterinary or phytosanitary controls at the border. In one MS draft national legislation included provisions that Customs will inform CAs about specific products presented to them.

Import controls may include documentary, identity and physical checks. Identity and physical checks are carried out at the border or/and at the importers’ premises. In three MS detailed rules and control procedures are established in national legislation. In some MS consignments may be released by Customs after the physical checks, but CAs detain the consignment awaiting analytical results.

Products to be sampled, scope of analyses and sampling frequency may be prescribed in

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\(^3\) In case of one MS this information is based not on the report, but on the correspondence of Directorate E and MS
detail in the legislation or national programmes and in some MS general rules for sampling are established (e.g. samples of 5% of imported consignments to be taken).

In all MS these controls take into account RASFF notifications, previous experience with the importers/exporters, EU legislative requirements (e.g. pesticides residues, contaminants, irradiation).

Conclusions
In all MS controls on FNAO originating from TC beyond specific EU requirements are performed on a risk-basis, but they are implemented differently. In eight of the visited MS these controls are carried out at importation and in three MS they are organised only at the market level.

5.2.12. Splitting of Consignments

Findings
In most MS splitting of consignments is not commonly used and no problems were observed. In one MS Customs were responsible for issuing the certified copy of the CEDs after the CA has issued the CED. In no MS was splitting of consignments observed prior to issue of the final CED and completion of checks.

Conclusions
Splitting of consignments takes place in accordance with EU Regulations, but is not commonly used.

5.2.13. Fees and Costs

Findings
In all MS, with the exception of one, fees for official import controls of products subject to EU legislation were established. Usually details on and calculation of fees are set out in national legislation.

Fees are usually calculated for a) documentary checks and issuing CED b) identity and physical checks (fixed rate or based on controls’ time or/and consignment size) c) costs of laboratory analyses. In one MS fees only apply to laboratory tests. In all MS additional costs such as storage or unloading are covered by the importer. The prices differ widely from country to country, and between regions in some MS. Laboratory costs depend on the analyses carried out and may be fixed in the legislation, or decided by individual laboratories. In some MS fees for import control of products beyond the harmonised EU legislation are established.

Conclusions
Most MS charge fees for import controls of FNAO in compliance with EU legislation, but the system of calculation and the amount charged varies.

5.2.14. Sampling

Findings
In most MS sampling for aflatoxins and/or pesticides was observed. In three MS problems concerning sampling for aflatoxins were identified. They referred to the cleaning of sampling equipment (Annex I A.3.3 of Regulation (EC) No 401/2006), representativeness of the sample (Annex I A.1) and random taking of incremental samples (Annex I A.3.4). The copy
of the analytical report was always left for the FBOs. In most of the MS sampling procedures were in place, but they were not always updated (see section 5.2.17).

Conclusions
In most of the MS sampling procedures complied with EU legislation.

5.2.15. Laboratory Performance

Findings
Laboratories for import controls of FNAO were designated in all MS. Most countries used their official laboratory network, but in four MS private laboratories are also used to analyse official samples of imported FNAO.

National Reference Laboratories for pesticide residues and mycotoxins
All MS visited have designated National Reference Laboratories (NRLs) for pesticides residues. In the case of mycotoxins, one MS had not designated the NRL. In two MS not all tasks required by Article 33(2) of Regulation (EC) No 882/2004 were delivered by NRLs for pesticides residues (e.g. organisation of relevant proficiency tests, dissemination of information and coordination of official laboratories).

Accreditation
Laboratories are accredited to the International Standard EN ISO/IEC 17025, nevertheless in three MS the scope of accreditation did not cover all analytical methods used for import controls (Article 12 of Regulation (EC) No 882/2004). In two of them validation of methods according to the parameters required by Annex III of the same regulation were not fully implemented.

Laboratories visited
In eight MS laboratories for mycotoxins were audited. In four of these MS laboratories for pesticides were also audited. In the remaining four MS, no significant problems in the laboratories had been detected in previous audit and no laboratory audits were carried out.

In seven out of eight MS subject to laboratory audits particular problems were detected:

1. In five MS mycotoxins laboratories did not comply with some requirements of Regulation (EC) No 401/2006 such as:
   - reporting of analytical results (Annex II. 4.4) – three MS;
   - homogenisation of sample (Annex II. 2 of Regulation (EC) No 401/2006) - two MS;
   - performance criteria (annex II 4.3.1) – two MS;
   - avoidance of daylight during the analytical procedures (Annex II 1.1); inadequate amount of replicate samples stored for every analysed sample (annex II 3) – one MS;
   - inadequate storage of defence and reference samples (Annex I A 3.7) – one MS.
2. In three MS the visited laboratories for pesticides residues had the following problems:
   - in cases when pesticide residues level had to be calculated to include parts not analysed, weights of separated parts were not recorded (point 4.7 of Annex to Commission Directive 2002/63/EC) – one MS;
   - validation of method and quality control procedures did not fully follow SANCO Guidelines 10684/2009 – one MS;
- scope of pesticides residues was too narrow to cover analyses required by Regulation (EC) No 669/2009 – one MS.

3. In two MS the Limit of Quantification estimated for Sudan Dyes was above the action limit of 0.5 mg/kg agreed at the Standing Committee of the Food Chain and Animal Health (SCOFCAH) meeting in June 2006.

Conclusions

In all MS accredited laboratories were designated for import controls, however, in three MS accreditation and/or validation of some methods is pending (Article 12 and Annex III of Regulation (EC) No 882/2004).

NRLs for mycotoxins analyses were designated in all MS except one. For pesticides residues all MS designated NRLs, but in three MS the NRLs’ activities did not cover all tasks required by Article 33 of Regulation (EC) No 882/2004.

In the majority of visited laboratories deficiencies (some were minor, others more significant) in implementation of specific analytical requirements of EU legislation were detected and therefore the analytical results are not always fully reliable.

5.2.16. Procedures for Performance and Reporting of Control Activities

Findings

In all visited DPEs/DPIs documented procedures for import controls were available. They were usually developed by the Central Competent Authority (CCA), but in some cases they were drawn up locally and were often part of the quality management system. In seven MS import and/or sampling procedures at the DPEs/DPIs were not updated in line with the recent legislative changes.

Conclusions

Documented procedures were in place, but they were not up-to-date in more than half of the MS visited (Article 8(3)(b) of Regulation (EC) No 882/2004).

5.2.17. Procedures for Non-compliant Lots

Findings

Procedures for non compliant consignments were in place in all MS. Measures for re-dispatch and destruction were taken. Special treatment and diversion of consignments from food into feed are not commonly used. Four MS authorised special treatment inland or in other MS, Article 20 of Regulation No 882/2004 was followed and cooperation between different CAs was in place.

In the case of re-dispatch to TC deficiencies were observed in four MSs. Most CAs did not take into account if the FBO had informed the CA of TC of origin/destination of the reason and circumstances preventing the placing of products on the EU market (Article 21 (1) (b) of Regulation No 882/2004). In one MS this problem was detected and addressed during the internal audit carried out before the FVO visit.

If consignments were rejected for import, the CAs of two MS did not notify their decisions to the customs services (Article 19 (3) of Regulation No 882/2004).

Conclusions

Procedures for non-compliant lots are implemented by MS as required by Regulation (EC) No 882/2004. Some MS using re-dispatch measures did not fully follow Article 21(1)(b) of
Regulation (EC) No 882/2004, which requires that the FBO should inform the CA in the TC, to ensure adequate supervision of the consignments in the TC.

5.2.18. Verification Procedures and Audit

Findings
Most MS have verification systems in place. However, in three MS procedures on verification of sampling frequency were not in place or ineffectively implemented (see section 5.2.10).

An internal audit system was in place in all visited MS. They organised specific audits on import controls, or alternatively included this subject in general audits. Nevertheless CAs in four MS did not carry out any audits related to import controls since Regulation (EC) No 669/2009 came into force.

Audit and verification procedures were effectively implemented in five MS.

Conclusions
A third of the MS did not implement efficient procedures for verification of sampling frequency. Internal audits on import controls covering the new Regulation (EC) No 669/2009 were pending in a third of the visited countries.

5.3. Rapid Alert System for Food and Feed

Findings
RASFF procedures were implemented in the audited countries. In two MS rejections of products subject to Regulation (EC) No 1152/2009 due to a lack of adequate health certificate and analytical report were not notified to RASFF. In one MS not all non-compliant consignments were notified, however they were indicated in the quarterly report on Regulation (EC) No 669/2009.

In case of non-compliances of foodstuffs subject to Regulation (EC) No 669/2009 analysed for pesticides residues, most MS notify RASFF when the Acute Reference Dose (ARfD) is exceeded, but one MS notifies all cases when the consignment does not comply with Maximum Residue Limits (MRLs). This is important if onward transportation to another MS is allowed pending analytical results, which finally are non-compliant and there is no communication between the MS concerned. In such cases official action should be taken by the CA in the MS of consignment’s destination (see also section 5.2.7). In one MS such notifications were not followed up by the CA at the consignments’ destination.

Conclusions
In most MS the RASFF procedures were adequately implemented, but in a few MS some deficiencies were identified.

6. RECOMMENDATIONS

To Member State authorities
The following is a list of the main recommendations made to MS, although these were not made to every MS.

Cooperation and coordination
a) Three recommendations were made to improve cooperation between Customs and CA (Article 24 of Regulation (EC) No 882/2004):
b) There was one recommendation on cooperation between CAs.
c) Based on Article 4(5) of Regulation (EC) No 882/2004, two recommendations were given on internal coordination within CAs and Customs:

**Resources for Performance of Controls**

Based on Article 6 of Regulation (EC) No 882/2004 six MS received recommendations on training for laboratory staff, sampling or import control procedures.

**Designated Points of Import and Designated Points of Entry**

a) Six recommendations were given to five MSs concerning designation and listing of places of import under Regulation (EC) No 669/2009 and 1152/2009.
b) Five MS received recommendations based on Article 16(3) of Regulation (EC) No 882/2004 on appropriate hygiene conditions of physical checks.

**Other places of import controls**

Three MS received recommendation on Control Points (Article 5 of Regulation (EU) No 258/2010) concerning their designation, listing and publication.

**Prior notification of consignments**

a) Four MS received recommendations on prior notification requirements.
b) Recommendation was given to two MS on use of the CED for prior-notification in case of products subject to Regulation (EC) No 1152/2009.

**Import controls of FNAO subject to Reg. 669/2009**

Recommendations were given to three MS on OT procedures including adequate use of the CED.

**Import controls of products subject to emergency measures**

a) Two MSs received recommendations on documentary checks (Article 7 of Regulation (EC) No 1152/2009):

**Customs release for free circulation**

Six MS received recommendations on customs release of product subject to Regulation (EC) No 669/2009 and emergency measures.

**Sampling frequency**

Six recommendations were advised to seven MS, most often related to sampling frequency of products subject to Regulations (EC) No 669/2009 and 1152/2009:

**Fees and costs**

One MS received recommendation to ensure that fees and costs resulting from official controls on import of FNAO are borne by FBOs (Article 14 of Regulation (EC) No 669/2009, Article 10 of Regulation (EC) No 1152/2009 and Article 7 of Regulation (EU) No 258/2010).

**Sampling**

Two MS received recommendations on sampling for mycotoxins (Annex I of Regulation (EC) No 401/2006).

**Laboratory Performance**

a) Two recommendations on NRLs were advised to two MSs (Article 33 of Regulation (EC) No 882/2004).
b) Four recommendations on laboratories accreditation (Article 12 of Regulation (EC) No 882/2004) were given to three MS.
c) Five recommendations were given to five MS on mycotoxins analyses (different requirements of Regulation (EC) No 401/2006).

d) Four recommendations were given on pesticides residues analyses to four MS.

e) One recommendation concerned sensitivity of analytical methods for Sudan Dyes.

**Procedures for Performance and Reporting of Control Activities:**

Recommendations on updated procedures for import control and sampling were given to six MS (Article 8(3)(b) of Regulation (EC) No 882/2004):

**Procedures for non-compliant lots**

Two different recommendations in relation to non-compliances were given to five MS: one in relation to re-despatch and second one on communication with Customs.

**Verification procedures and audit**

a) Three MS received recommendations on verification procedures related mainly to the sampling frequency (Article 8 of Regulation (EC) No 882/2004);

— Ensure adequate implementation of procedures to verify frequency of sampling of FNAO as required by Article 8 of Regulation (EC) No 882/2004;

— Ensure adequate implementation of procedures to verify effectiveness of import controls as required by Article 8 of Regulation (EC) No 882/2004;

b) Four MS received recommendations on audits (Article 4 of Regulation (EC) No 882/2004).

**RASFF**

Five recommendations in four MS were given on RASFF (three of them referring to Art 19(3) of Regulation 882/2004, and two other on Art 50 of Regulation (EC) No 178/2002).

For all the individual reports the relevant MS provided an action plan in relation to recommendations made.

7. **ACTION TAKEN BY COMMISSION SERVICES**

7.1. **Follow-up of audit recommendations**

A copy of the final report for each audit was sent to the national CAs with a request for an action plan indicating the steps envisaged to address the report's recommendations.

A deadline was set for the receipt of these plans and the response of the CAs was analysed. Where it was considered that a response did not address the issues raised, the Commission's services actively pursued the matter with the authorities concerned.

7.2. **Additional action by the Commission Services**

With regards to observations made in this overview report the following actions by the Commission Services are considered:


— to improve cooperation with customs authorities (negotiations with TAXUD);

— Better Training for Safer Food – ad-hoc issues to be discussed at technical level;

— update of the Guidance document for CAs for the control of compliance with EU legislation on aflatoxins:
following recent changes in legislation;
better clarification of issues which have been identified as subject to different interpretations;
update and complete the list of FPIs and DPIs;
any other relevant issue;
— to align the control measures provided for in Regulation (EU) No 258/2010 to the control measures provided for in Regulation (EC) No 1152/2009;
— to improve the reporting of the control data under Regulation (EC) No 1152/2009 and other safeguard measures;
— to consider the strengthening of the legal provisions in Regulation (EC) No 1152/2009 to ensure that consignments are only released for free circulation in case a fully completed CED is provided to the customs (in relation with the second indent);
— audits to some “inland” MS are planned for 2013 to further investigate problems with the onward transportation and customs release. A follow-up audit in one MS is also envisaged.
Annex I

DETAILS OF AUDITS UNDERTAKEN

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## ANNEX II

### Table of legislation

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**Guidelines**

