

ROADMAP

Title of the initiative:

Review of the rules on the financing of official controls ("inspection fees") - Articles 26 to 29 of Regulation (EC) No 882/2004

Type of initiative (CWP/Catalogue/Comitology): CWP

Lead DG/contact person/details: DG SANCO

Expected date of adoption of the initiative (month/year): 9/2011

Date of modification: 12/03/2010

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Initial IA screening & planning of further work

A. Context and problem definition

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

Legislation on inspection fees across the EU dates back to the '80s with reference to the veterinary sector (public veterinarians are heavily involved in official controls due to the nature of the products/animal involved). Directive 85/73/EEC set for the first time harmonised rules in this field and established so-called Community fees (i.e. harmonised fees applicable in relation to a number of inspection activities in slaughterhouses, cutting plants, etc).

The complexity of the legal framework, the differences in the way the competent authorities organize controls and the varying costs of performing official controls across the Member States, resulted in problems with its implementation and a high number of complaints and requests for interpretation (and this in the context of a Community of 12, and then 15, Member States).

The Commission proposal, that led to the adoption of Regulation (EC) 882/2004, included the idea of abandoning harmonisation in this area and leave the Member States free to organize the financing of their official controls provided that sufficient resources were allocated. The current rules had then been agreed at the final stage of the debate with the legislator (EP and Council).

Articles from 26 to 29 of Regulation (EC) No 882/2004 therefore set the rules to be followed by the Member States for the financing of official controls. Among the tools available to Member States for this purpose, and in certain areas the only tool to be used, there are fees or charges to be paid by food business operators in accordance with the provisions of the Regulation. In order to understand the state of implementation of the new rules the Commission launched an external evaluation in 2008 (concluded in February 2009) and reported on this to the EP and Council with Report COM/2009/334/Final (in line with Article 65 of the Regulation).

This review is intended to result in a proposal for changes to current rules including legislative options.

Regulation (EC) No 882/2004 sets the horizontal framework for official controls applicable throughout the food and feed chain including animal health and animal welfare (partly also plant health). Changes to the rules for the financing of official controls would therefore have an impact on all these sectors when it comes to the enforcement of the related rules. Current SANCO initiatives in all legislative areas (animal welfare, import, residues, animal health, plant health, etc.) will therefore take into consideration the on-going review on the rules of financing official controls when it comes to this aspect.

What are the main problems identified?

The 2008 evaluation study and evidence from stakeholders and FVO suggest that the main objective of the legislation on the financing of official controls (i.e. that MS have adequate financial resources to carry out the needed official controls) is not being fulfilled across the EU.

In details, the study concluded that the current legal framework is almost unanimously regarded as convoluted, difficult to interpret and contradictory. It identifies in particular the following problem issues:

- *fees do not cover inspection costs*: according to the study, at the moment 14 Member States do not cover the costs occasioned by the official controls through the inspection fees they collect. Only 7 Member States report that costs are being covered in this way, while a further 6 Member States report that this is possibly occurring in some cases (some activities; some regions) but not

in others. However, the lack of clarity (see below) on the way fees are determined in the different Member States makes it almost impossible, for the Member States themselves, to have a clear overview on the way the inspection fees should cover the actual costs;

- *lack of uniformity*: the current legal framework contains internal inconsistencies. Moreover it is open to various, and sometimes diverging, interpretations which substantially leave the MSs free to organize their inspection fees systems as they see fit in ways which are not consistent throughout the Union (and sometimes within the MSs themselves in case of MSs with a federal structure). This is the case even for those activities for which the collection of a fee is "mandatory" (mainly controls on import and on the initial stages of the production of food of animal origin).

- *lack of transparency*: the provisions contained in the current legal framework with reference to providing information to stakeholders and the Commission about the calculation of inspection fees systems are rather vague and limited. Such information is therefore not readily available not only to the general public but also to FBOs.

- *lack of clarity*: the rationale behind the current legal framework remains unclear with particular reference to: a) the reasons why certain areas are covered by mandatory fees and not others within the same food chain (food of animal origin for instance), b) the level of minimum/standard fees as set in the Regulation and c) the cost criteria as now mentioned in Annex VI to the Regulation.

- *lack of flexibility*: the current legal framework introduces some criteria which have to be followed when designing inspection fees systems and which should also be taken into consideration to modulate the system in view of risk factors, the degree of past compliance, own-checks, the instances of small and/or traditional businesses, business located in remote regions, etc. However the way in which these criteria are described in the legislation (together with the lack of transparency mentioned above) make these provisions difficult to implement.

The mentioned problems may put the Member States in a situation where they cannot avail of adequate financial resources through fees and this might affect the efficiency with which official controls are carried out by the competent authorities. Such a situation might have an impact on the level and quality of the enforcement activities carried out by the competent authorities of the Member States and consequently might reduce compliance of food business operators with the relevant rules. All this has the potential of increasing the risks for consumers of being exposed to avoidable hazards. Risks involve also damages to the Union economy for the spreading of animal or plant diseases which might be prevented when official controls are carried out in the most efficient way.

Who is affected?

Member States competent authorities and food business operators at all level (including importers), Consumers might be indirectly affected taking into consideration that a reduction in the competent authorities' efficiency might have an impact on the level and quality of official controls carried out.

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

The 2008 evaluation study and the initial consultation phase that followed show that ambiguity of the current legal framework has led to the development of fees systems which vary greatly across the EU and have unclear rationales. Potentially this could have a negative impact on resources available for official controls and on the internal market.

This trend is bound to increase unless clear, general rules/principles are set at Union level.

Under the current rules and for the reasons stated above, Member States have already had the opportunity to develop their own systems for financing official controls and the problem issues which have resulted from that have been clearly identified in the 2008 external study.

Action at Union level therefore remains the option with more added value.

B. Objectives of EU initiative

What are the main policy objectives?

General objective:

Develop a clearer, simpler and more transparent system to ensure the fulfilment of the principle set in Article 26 of Regulation (EC) No 882/2004: Member States shall have adequate financial means to provide the necessary staff and other resources for official controls.

Such a system would be able to provide the adequate means for the Member States to enforce in an efficient and effective way food and feed law, animal health, plant health and animal welfare rules. Better enforcement would also improve compliance with said rules by food business operators, have a positive impact on the safety of food products, improve human, plant and animal health and overall increase consumers' confidence.

Specific objectives:

Efficiency: provide adequate financial means for the efficient performance of official controls to ensure food safety;

Simplification: clearer and simpler legal framework;

Comparability: promote, as much as possible, the establishment of a level playing field across the EU taking into account MS different cost structures;

Streamlining: reduce the administrative burden on the MS and on stakeholders as much as possible;

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

Due to the current unfavourable economical climate it is likely that resources to be devoted to official controls will become scarcer. In such a situation the development of tools which would support the Member States in making a more efficient use of the available resources is to be considered a fundamental objective for the Union as a whole.

C. Options

(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered? (iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

A. Harmonise throughout the EU: same fee across the EU for the same control.

B. Deregulate: no more EU rules on fees apart from need for adequate resources

C. Improve the current system: The impact assessment will be focused on how changes to the features of the current system can best ensure the delivery of the stated objectives.

This option would therefore be divided into several sub-options according to what features and related changes are to be introduced into the system (e.g. calculation method, list of activities to be covered, cost categories).

All these options require changes to current Regulation (EC) No 882/2004 and therefore Co-Decision process. Some soft-law could be considered together with the foreseen changes.

Also the "do-nothing" option will be considered, i.e. leaving the rules as they are and consider only soft-law instruments.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

None in particular but the necessary coordination with the other DGs will be ensured with the Inter-Service steering group which will support DG SANCO along the process.

Explain how the options respect the proportionality principle:

The proportionality principle will be considered in the analysis of each option but it is for option C that this becomes fundamental. The changes to be introduced to the current system under this option are meant to strike the right balance between principles at EU level and the necessary flexibility to allow the Member States to adapt the system to their own national systems and different costs structure. The principles to be set at EU level will go only as far as this brings added value to the system as a whole.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

A. Harmonise throughout the EU: this option is likely to have a negative impact on the functioning of the internal market due to the fact that standard fees might be higher than costs in some Member States and lower in others. Introducing corrective coefficient might only in part

overcome this issue. Competitiveness of businesses might be consequently affected. The administrative burden on competent authorities is also likely to increase due to need of providing detailed data and reports to the EU Commission on the functioning of the harmonized systems. For those Member States which would not fully recover costs with standard fees, it is also likely that this situation might affect the efficiency with which the competent authorities carry out official controls. This might have an impact on the level and quality of the enforcement activities carried out by the competent authorities and therefore expose consumers to an increased public health risk and the EU economy to possible damages linked to the spreading of animal and plant diseases.

B. Deregulate: this option is likely to have as well a negative impact on the functioning of the internal market due to the fact that systems might vary greatly among Member States with some using public funds to finance official controls and others using inspection fees. Variations might also occur across different parts of the food and feed chain. This might therefore have also a negative impact on competitiveness of businesses.

It is also likely that Member States would make less use of inspection fees compared to today's situation and this might affect the efficiency with which the competent authorities carry out official controls. This might have an impact on the level and quality of the enforcement activities carried out by the competent authorities and therefore expose consumers to an increased public health risk and the EU economy to possible damages linked to the spreading of animal and plant diseases

Administrative burden would depend very much on the systems implemented by the individual Member States.

C. Improve the current system: changes to the current system to improve its functioning are likely to have a positive impact on competent authorities (they would be able to recover costs through fees), food businesses (increased efficiency and clarity) and consumers (availability of funds through fees would allow the Member States to increase efficiency in the way they carry out official controls). Careful consideration is to be given to the changes to be introduced to each component of the current system in order to avoid negative impacts on small or disadvantaged businesses or to increase the administrative burden for competent authorities and food business operators (including importers) alike.

These issues will be further explored during the on-going impact assessment process.

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

No

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

One of the main objectives of the review is indeed a simplification of the current system with a specific focus on the reduction of administrative burden for all actors involved. Relations with third countries are not a main concern for this review but as any change in the current rules will affect them, this aspect will be considered during the impact assessment process.

E. Planning of further impact assessment work

When will the impact assessment work start?

It started with a specific DG SANCO kick-off meeting on 8/12/2009.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when?

(v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

The Evaluation study carried out in 2008 by an external contractor on behalf of DGSANCO constitutes a fundamental starting point to correctly assess the status quo.

This information has been supplemented with the results of the initial consultation phase with Member States and stakeholders (see the following point).

Further information is needed with reference to the possible impacts of the different options. For this part of the exercise an external consultant will be contracted in order to gather the necessary data and information. It is foreseen to receive the results of this work by the 3rd quarter of 2010.

The level of details of the analysis is going to be defined with the terms of reference to be included in the contract with the external consultant.

The focus of the analysis will be on impacts on public authorities and food business operators with specific attention to the small businesses, the ones located in regions subject to particular geographical constraints and the ones using traditional methods for production, processing and distribution. The related administrative burden for businesses will be measured using the EU Standard Cost Model as appropriate.

Which stakeholders & experts have been/will be consulted, how and at what stage?
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An initial consultation phase with Member States and stakeholders took place in order to better identify the problem issues. This phase comprised:

- a presentation of the findings of the evaluation study at Standing Committee on the Food Chain and Animal Health (SCOFCAH) on 5 May 2009;
- a dedicated working group on 7 September 2009 with experts from the Member States;
- another dedicated working group with other relevant stakeholders on 19 October 2009 in the context of the Advisory Group on the Food Chain and Animal and Plant Health – stakeholders sent several contributions following the meeting.

The plan is to involve again the established networks during the impact assessment phase to validate the work undertaken and gather further information if needed. Member States and other stakeholders will be in any case consulted once the impact assessment process comes to an end in order to validate the related results.