

principal focus of complaint appeared to be the scientifically dismissed concern with the presence of methanol. It will be interesting to see what further developments await. The publication of EFSA's final report has been pushed back to November 2013 on the basis that extra time is needed to evaluate what was said in the April consultation, when activists and industry representatives were set against each other. At the time of writing it has been announced that the FSA sponsored study has been completed, but reportedly too late to inform the EFSA re-evaluation. No indication has been given not only of the results but, more importantly, what *kind of* results might follow from the study. It remains unclear how self diagnosed perceptions of harm in this context can be investigated in a credible and consequential manner. Indeed, it is unclear that investigation can have any consequence at all except creating, arguably unnecessary, uncertainty about a useful and trouble-free product. Meanwhile, parties connected to the issue – industry and activist alike – seem more dissatisfied than ever.

## The EU's New Regulatory Framework on Official Controls, Animal Health, Plant Health and Seeds

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### I. Introduction

On 6 May 2013, the European Commission (hereinafter, Commission) adopted a package of propos-

als to consolidate and update the current *acquis* on animal health, plant health and seeds. The package also establishes new rules on official controls in these three sectors, including rules on official controls on the importation of food into the European Union (hereinafter, EU). The current body of EU legislation covering the food chain consists of almost 70 pieces of legislation. The proposed reform is intended to cut this down and includes a proposal for a *Regulation on Animal Health*<sup>1</sup>; a proposal for a *Regulation on protective measures against pests of plants*<sup>2</sup>; a proposal for a *Regulation on the production and making available on the market of plant reproductive material (seeds)*<sup>3</sup>; and a proposal for a *Regulation on official controls and other activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant reproductive material, plant protection products*.<sup>4</sup>

### II. Aim and content of the proposals animal health, plant health and seeds

The aim of the proposed reform is to modernise and simplify the regulatory framework of the European Union, to take a more risk-based approach to the protection of health (focussing on the most relevant issues) and to establish more efficient controls to ensure the effective application of the rules in the food chain. In the three sectors covered by the reform (animal and plant health and seeds) a number of issues should be highlighted.

To regulate animal health in the EU, the package introduces a single piece of legislation based on the principle that '*prevention is better than cure*' by improving and harmonising EU Member States' national disease detection and control measures to tackle health, food and feed safety risks in a coordinated way. This enhanced system, with new rules on identification and registration of animals, as well as the introduction of more flexibility into the system, is intended to allow farmers and veterinarians to swiftly react and limit the spread of diseases and minimise their impact on livestock, and on consumers. Furthermore, the proposal on animal health introduces a categorisation/prioritisation of diseases, which requires intervention at EU level, enabling a more risk-based approach and appropriate use of resources.

In relation to plant health, the respective proposal states that the EU's agriculture, forests and natur-

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1 Proposal for a Regulation of the European Parliament and of the Council on Animal Health, COM(2013)260 final.  
2 Proposal for a Regulation of the European Parliament and of the Council on protective measures against pests of plants, COM(2013)267 final.  
3 Proposal for a Regulation of the European Parliament and of the Council on the production and making available on the market of plant reproductive material (plant reproductive material law), COM(2013)262 final.  
4 Proposal for a Regulation of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health, plant reproductive material, plant protection products and amending Regulations (EC) No 999/2001, 1829/2003, 1831/2003, 1/2005, 396/2005, 834/2007, 1099/2009, 1069/2009, 1107/2009, Regulations (EU) No 1151/2012, [...] /2013, and Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC, 2008/120/EC and 2009/128/EC (Official controls Regulation), COM(2013)265 final.

al heritage are being threatened by pests and diseases that attack plants and that the introduction of new pest species has increased as a result of the globalisation of trade and climate change. To prevent new pests from establishing in the EU and to protect plant growers as well as the forestry sector, the Commission proposes to upgrade the existing plant health regime, focussing on high-risk trade coming from third countries and increased traceability of planting material in the internal market. The proposed legislation also introduces new measures for the surveillance and early eradication of outbreaks of new pest species and financial compensation for growers hit by such quarantine pests.

On plant reproductive material (including seeds), the objective of the proposal adopted by the Commission is to provide more simplified and flexible rules for the marketing of seeds and other plants' reproductive material with the aim of ensuring productivity, adaptability and diversity of the EU's crop production and forests and to facilitate their trading, while the broad choice of material and the improved testing requirements are intended to contribute to the protection of biodiversity and to breeding oriented towards sustainable agriculture.

### III. The proposal on official controls

With respect to the official controls in the three abovementioned sectors, the proposal affirms that there is a need to strengthen the instruments currently available to the competent authorities in the EU Member States to check compliance with EU legislation through controls, inspections and tests. *Regulation (EC) No. 882/2004 of the European Parliament and Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and welfare rules*<sup>5</sup> currently applies together with sectoral provisions, which govern respectively the imports of animals and animal origin products, those of plant and plant products, and the controls on food and feed for which a specific risk requires increased attention at the borders. Instead, the Commission is now proposing to establish a common set of rules applicable to all controls performed on animals and goods entering the EU to increase efficiency and help in prioritising controls on the basis of risk. The Commission argues that recent food scandals have shown the

need for more effective action on the part of enforcement authorities to protect consumers and operators alike from the risks (also in economic terms) that may arise from breaches of the rules along the food chain. The proposal on official controls includes a requirement for EU Member States to introduce tougher financial penalties for food fraud, ensuring that fines are commensurate to potential economic gain in order to be truly dissuasive (see Title VII of the proposal *Enforcement action, Chapter I - Action by the competent authorities and penalties*). The Commission is also proposing to be given powers to order EU Member States to carry out testing and controls in cases of suspected food fraud and adulteration, rather than just recommend testing, as it is currently the case (Title VI of the proposal *Union activities - Chapter I Commission controls*). Unannounced on-the-spot checks on the food supply chain are proposed to reduce the risk of frauds like the recent one on horsemeat, which was labelled and marketed as beef.

### IV. Comment from an international trade perspective

On 17 May 2013, the Commission notified the *Draft Regulation of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health, plant reproductive material and plant protection products* to the WTO Committee on Sanitary and Phytosanitary Measures.<sup>6</sup> WTO Members have 120 days from the date of circulation of the notification to submit comments.

From an international trade perspective, the most important proposals are made in the field of official controls. A legal basis to adopt delegated acts in section II of the proposal (*Official controls at Border Control Posts on animals and goods*) is intended to allow the Commission to establish a list detailing which specific animals and goods (including their respective CN codes) should be controlled. According to the proposed package, the Commission will be given the power to define the cases and conditions under which animals and goods can be exempted from said

<sup>5</sup> OJ 2004 L 165/1.

<sup>6</sup> WTO Doc. G/SPS/N/EU/43, 17 May 2013.

controls. The package also foresees new entities and documents: Border Control Posts (hereinafter, BCPs) will replace the different entities currently tasked with border control duties. It is proposed to establish common requirements for BCPs with the possibility for the Commission to further refine such requirements to take account of specific features related to the different categories of animals and goods being controlled. Harmonised rules for the designation, listing, withdrawal and suspension of BCPs will also be laid down. A new Common Health Entry Document (hereinafter, CHED) has been proposed to be used by operators for the mandatory prior notification of arrival of consignments of animals and goods and by competent authorities to record controls on such consignments and any decisions taken. Under the proposed regime, the Commission will be empowered to establish the format of the CHED, the modalities for its use, and the minimum time requirements for the prior notification of consignments to BCPs.

Finally, the Commission proposes to upgrade the system dedicated to recording and tracing official control results, the Trade Control and Expert System (TRACES), established by *Commission Decision 2003/24/EC of 30 December 2002 concerning the development of an integrated computerised veterinary system*<sup>7</sup> and currently used for the management of data and information on animals and products of animal origin and official controls thereon, so as to allow its use for all goods for which EU agri-food chain legislation establishes specific requirements or official control modalities.

## V. Conclusions

With the adoption of the package of measures on animal and plant health, seeds and official controls in these sectors, the Commission has initiated the legislative procedure. The package of measures still needs to be adopted by the Council and the European Parliament. The Commission estimates that the package will enter into force in 2016. The reform will have

a great impact on the import of food, commodities, seeds and plants into the EU. Issues like the use of veterinary medicines and plant protection products and their residues are also concerned by the reform. It is early to predict whether certain elements of the reform, such as, for example, the proposed BCPs and the CHED in relation to imports from third countries and the upgrading of the TRACES system, will contribute to a system of controls that works smoothly and does not result in new requirements, formalities and controls which, in the worst case, establish sanitary and phytosanitary barriers or technical barriers to trade into the EU.

## Lifestyle Risks

*This section discusses the regulation of “lifestyle risks”, a term that can apply to both substances and behaviours. Lifestyle risks take place along the line of “abstinence – consumption – abuse – addiction”. This can concern substances such as food, alcohol or drugs, as well as behaviours such as gambling or sports. The section also addresses the question of the appropriate point of equilibrium between free choice and state intervention (regulation), as well as the question of when risks can be considered to be acceptable or tolerable.*

*In line with the interdisciplinary scope of the journal, the section aims at updating readers on both the regulatory and the scientific developments in the field. It analyses legislative initiatives and judicial decisions and at the same time it provides insight into recent empirical studies on lifestyle risks.*

## Under the influence? The Alcohol Industry’s Involvement in the Implementation of Advertising Bans

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On 1 March 2013 an independent report called “Health First” was published calling for, amongst other things, a total ban on alcohol advertising in the UK. This article seeks to evaluate the major hurdles that would stand in the way of the UK, and indeed the EU itself, pursuing such a prohibition. It argues that the involvement of the alcohol industry is the main roadblock preventing the enactment of a radical but much needed policy. It advocates disassociation with the alcohol industry and a willingness on the part of EU policy makers to fight any challenges

<sup>7</sup> OJ 2003 L 8/44.

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