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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of 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 and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation)

– Draft Statement of the Council's reasons

I. INTRODUCTION

1. On 6 May 2013 the Commission submitted to the European Parliament and to the Council the above-mentioned proposal, based on Article 43(2), Article 114 and Article 168(4)(b) of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure)¹.
2. The European Parliament (EP) adopted its position at first reading on 15 April 2014². The European Economic and Social Committee and the Committee of the Regions were consulted and delivered their opinions on 16-17 October 2013 and 29 November 2013 respectively.
3. The Joint Working Party of Veterinary Experts and Phytosanitary Experts, the Working Party of Chief Veterinary Officers and the Working Party of Agricultural Counsellors/Attaches examined the proposal on thirty seven occasions under various Presidencies.
4. The Permanent Representatives Committee (Part 1) agreed on the initial negotiation mandate which was then confirmed as a general approach by the Council on 26 October 2015³. This mandate was further revised on 18 May 2016⁴ and 10 June 2016⁵.
5. Following a number of technical meetings and informal trilogues during the Luxembourg and Netherlands Presidencies, on 15 June 2016, at the tenth trilogue, a provisional agreement was reached between the co-legislators on a compromise text with the view to an early second-reading agreement. The Permanent Representatives Committee (Part 1) endorsed that compromise text on 22 June 2016⁶.

¹ 9464/13 + ADD1 +ADD 2

² 8304/14

³ 13242/15+ 13181/15 + 13209/15

⁴ 8121/16+ ADD1 to ADD5

⁵ 8346/16

⁶ 10248/16 + ADD1

6. On 12 July 2016, the Chair of the Committee on the Environment, Public Health and Food Safety of the European Parliament addressed a letter to the President of the Permanent Representatives Committee stating that, if the Council adopts its position at first reading in accordance with the text attached to this letter, he would recommend to the Plenary that the Council's position should be accepted without amendment, subject to legal-linguistic verification, at Parliament's second reading.
7. On 10 October 2016, the Council reached a political agreement on the compromise text⁷.

II. OBJECTIVE

The general objective of the proposed Regulation is to simplify and streamline the existing legal framework of Regulation (EC) No 882/2004, encompassing almost all sectors of the agri-food chain in a unique set of rules applicable to official controls; some sectors, for example plant health, plant reproductive material, animal by-products or organic production, currently have separate rules on controls. The Regulation also aims to improve the efficiency of official controls performed by the Member States along the agri-food chain so as to allow for quick responses in crisis situations, while minimising the burden for operators; to that end, it requests that such controls be performed on all operators, on a risk basis and with appropriate frequency.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

1. General

The compromise text on which a political agreement was reached in Council fully reflects the agreement reached between the co-legislators. It maintains the objectives of the Commission proposal and, at the same time, takes on board the most important amendments adopted by the European Parliament in first reading.

⁷ 12175/16 + ADD1

2. Main issues

a) Scope

The Commission recalled that although Regulation (EC) No 882/2004 provides a general framework for official controls in the sectors of feed and food law, animal health and animal welfare rules, for historical reasons, controls for animal health purposes (both on domestic and imported goods) and controls on residues of veterinary medicinal products remained regulated separately. It also indicated that controls on certain other sectors pertaining to the agri-food chain- i.e. plant health, plant reproductive material (PRM), and animal by-products (ABP)- were not included in the scope of Regulation (EC) No 882/2004 and that specific separated sectoral regimes were developed for them. Therefore the Commission proposed to enlarge the scope of the existing legal framework of Regulation (EC) No 882/2004 to incorporate those sectors as well as to make clear that organic production, protected designations of origin, protected geographical indications and traditional specialities guaranteed, and genetically modified organisms (GMOs) were covered.

The Council considered that it was too early, at this stage, to include in this Regulation the official controls on plant reproductive material, pending a new Commission proposal on plant reproductive material. The Council agreed to limit the official controls on GMOs deliberately released into the environment to those for the purpose of feed and food production, as well as to exclude the specific controls of pesticides application equipment. Furthermore, the Council clarified that although this Regulation should not apply to the verification of compliance with Regulation (EU) No 1308/2013 (Common organisation of the market in agricultural products), it should apply when fraudulent or deceptive practices in respect to marketing standards are identified during checks performed pursuant to Article 89 of Regulation (EU) No 1306/2013.

b) Financing of official controls

Whereas the Commission's proposal retained the existing general principle that Member States should allocate appropriate financial resources to official controls, it proposed expanding the current obligation of collecting fees from only some business operators to all operators in the areas covered by the Regulation. The objective was to fully recover the costs incurred for the performance of official controls from all sectors, while providing for exemptions for micro-enterprises. It did not propose to keep the current levels fixed for the mandatory inspection of business operators handling meat, fishery products, milk production, for the approval of feed establishments and for (most) controls at borders. It proposed instead that those levels be set by Member States on the basis of uniform and transparent methods.

The Council considered that no change was necessary to the scope of the mandatory fees system and that the existing fixed levels should be kept as overall the system was satisfactory. However, the Council agreed that Member States willing to charge fees at the level of the costs incurred and not at a fixed level would have to follow harmonised rules on cost coverage and calculation methods. The Council also agreed that Member States should be obliged to enhance the transparency of the calculation, collection and setting of fees or charges, and of the consultation with relevant stakeholders.

c) Role of the official veterinarian

The Commission proposed a flexible approach, allowing Member States to designate staff they deem to be best qualified to perform the official controls, while obliging them to provide appropriate training to all staff.

The Council agreed that, to enable the efficient organisation of the official controls, Member States should have the discretion to identify the most appropriate staff to perform such controls provided that a high level of protection of human health, animal health and animal welfare is ensured throughout the agri-food chain and that international standards and obligations are met.

However, the Council deemed necessary that Member States be required to refer to official veterinarians in certain cases where their specific skills are necessary to ensure a sound outcome of the official controls (i.e. for live animals, meat and some other products of animal origin). In the Council's view that should be without prejudice to the possibility for Member States to also use official veterinarians including for official controls on poultry and lagomorphs, or other specifically designated persons in cases where this is not required in accordance with this Regulation.

d) Delegated and implementing powers

The proposed act will constitute a framework Regulation which will empower the Commission to determine a significant amount of its details by delegated and/or implementing acts. During the examination in the Council, particular attention was paid to the proposed empowerments of the Commission. While the Council did not contest nor change the principle of a framework Regulation, a large number of articles were redrafted in order to better circumscribe the Commission's empowerment.

Furthermore, for the provisions concerning specific additional rules for official controls in relation to specific areas (Articles 18 to 27) - e.g. the production of meat for human consumption, animal welfare, plant protection products or plant health, the Council introduced many essential elements in the basic act and allowed for empowerments for the Commission as appropriate.

Finally, in order to ensure that a number of 'key' delegated and implementing acts necessary for the Regulation to be properly applied are adopted before the date of application of the Regulation, transitional periods have been introduced. This is to ensure that the existing provisions to be replaced by the above-mentioned acts will continue to apply until the latter have been adopted by the Commission. Such adoption should take place as soon as possible and at the latest 3 years after the date of application of the Regulation. This will ensure that there is no gap, while providing sufficient time to the Commission to prepare those acts.

e) Reporting of infringements

Following the strong request from the European Parliament, the Council agreed to include in this Regulation, provisions obliging Member States to have in place mechanisms to enable the reporting of actual or potential infringements of this Regulation, the follow-up of such a reporting and the protection of the persons reporting against retaliation, discrimination or unfair treatment (Article 140).

IV. CONCLUSION

The Council's position at first reading fully reflects the agreement reached between the two co-legislators, as confirmed by the above-mentioned letter from the Chair of the European Parliament's Committee on the Environment, Public Health and Food Safety to the President of the Permanent Representatives Committee dated 12 July 2016. It was subsequently endorsed by the Council on 10 October 2016 through the adoption of the political agreement.
