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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning
of the European Union concerning the position of the Council at first
reading on the adoption of a Regulation 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 of the European Parliament and of the
Council (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, 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 of the
European Parliament and of the Council (EC) No 854/2004 and (EC) No
882/2004, 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)

Delegations will find attached document COM(2017) 6 final.

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EUROPEAN
COMMISSION

Brussels, 6.1.2017
COM(2017) 6 final

2013/0140 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council at first reading on the adoption of a Regulation 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 of the European Parliament and of the Council (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, 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 of the European Parliament and of the Council (EC) No 854/2004 and (EC) No 882/2004, 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)**

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

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**position of the Council at first reading on the adoption of a Regulation 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 of the European Parliament and of the Council (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, 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 of the European Parliament and of the Council (EC) No 854/2004 and (EC) No 882/2004, 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)**

1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council (document COM (2013) 265 final – 2013/0140 COD): 6 May 2013.

Date of the opinion of the European Economic and Social Committee: 16-17 October 2013

Date of the opinion of the Committee of the Regions: 29 November 2013

Date of the position of the European Parliament, first reading: 15 April 2014

Date of transmission of the amended proposal: *

Date of adoption of the position of the Council: 19 December 2016

- * Taking into account the developments in the informal discussions between the Council and the European Parliament following the Parliament's first reading, the Commission did not prepare an amended proposal but expressed its views on the Parliament amendments in the "Communication de la Commission sur les suites données aux avis et résolutions adoptés par le Parlement européen lors de la session d'avril 2014" (document SP (2014)471) sent to the European Parliament on 9 July 2014.

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The objective of the proposal is to modernise and improve the effectiveness and efficiency of the official controls system across Member States. Official controls serve to ensure high standards of safety and quality along the agri-food chain that are consistently enforced and meet the expectations of the EU trade partners.

The proposal replaces the existing official controls Regulation from 2004. It broadens the scope of controls to cover plant health and animal by-products, which until now have been mainly governed by sectorial rules, to provide a more coherent and comprehensive approach to official controls along the entire agri-food chain.

The proposal applies the risk based approach to official controls. It also aims to reduce regulatory and administrative burdens for authorities and business operators. In particular, the proposal addresses inefficiencies in the system of official controls on residues of veterinary medicines in animals and animal products. It improves the mechanism of administrative assistance and cooperation among national control authorities to handle more efficiently cross-border cases of non-compliance. Accreditation requirements to ISO standards for official laboratories are retained. Yet, transitional measures and temporary or permanent derogations are provided as appropriate.

The proposal provides a set of common rules for all control activities to be performed at EU borders on animals and goods from non-EU countries which require increased attention to deliver on health protection. This will overcome the fragmentation of current rules, making the system of controls less burdensome for authorities and businesses alike. Whilst documentary controls will be systematically performed on those animals and goods that need to be checked at the border control posts, common criteria will ensure that identity or physical checks are carried out at a frequency that reflects the risk posed by those animals or goods.

Reinforced transparency rules aim to increase the accountability of the competent authorities towards consumers and businesses on how agri-food chain rules are applied and enforced.

A new requirement for national enforcers to also carry out regular and unannounced controls to detect fraudulent practices along the agri-food chain and more stringent financial penalties for fraudulent behaviours represent a major step forward in the fight against food fraud and in fostering fair competition among businesses.

The proposal builds on the current system of mandatory fees for official controls so that adequate resources are allocated to national control systems, whilst taking into account the interests of small businesses.

The proposal contains a number of empowerments for the Commission to adopt Delegated or Implementing acts to complement or specify control and enforcement requirements in certain key areas of the agri-food chain. This will allow for specific enforcement arrangements, including minimum frequencies of controls, where the specific hazards or risks in a certain area so warrant. At the same time, the empowerments will enable the Commission to adjust certain elements of the system of controls in those areas, should the conditions change over time.

3. COMMENTS ON THE POSITION OF THE COUNCIL

3.1 General comments

The Commission proposal was transmitted to the European Parliament and to the Council on 6 May 2013. The European Parliament adopted its position at first reading on 15 April 2014. It supported the main goals of the Commission's proposal. In particular the Parliament agreed with the need to adopt a more integrated approach to official controls to overcome fragmentation and overlapping of rules and with the need to have risk-based controls. It also agreed with the need to ensure that official controls are adequately funded and that the way fees are calculated needs to be made public.

In relation to the organic sector, the European Parliament was supportive of the Commission approach to have, in the Official Controls Regulation, Commission empowerments for the adoption of control rules to specifically cater for the organic sector. This approach was not reflected in the Council general approach, which removed the empowerments and introduced a considerable number of specific rules (and corresponding empowerments) in the organic proposal. To facilitate the co-legislators' agreement, and after careful consideration that the effectiveness of controls would not be compromised, the Commission accepted a fewer number of empowerments in the Official Controls Regulation for the organic sector.

The position of the European Parliament included 319 amendments to the original Commission proposal.

No modified Commission proposal was issued. In the "*Communication de la Commission sur les suites données aux avis et résolutions adoptés par le Parlement européen lors de la session d'avril 2014*" (document SP (2014)471) sent to the European Parliament on 9 July 2016, the Commission indicated that it could accept in full, in part, in principle or subject to rewriting 129 of the 319 amendments, as it considered that these amendments could clarify or improve the Commission proposal and were consistent with its general aims.

Following adoption of the European Parliament's first reading position, informal discussions continued between the delegations of the European Parliament, the Council Presidency and the Commission, with a view to concluding an agreement at the common position stage ('early second reading agreement').

These discussions proved successful and are reflected in the common position of the Council, which was adopted 19 December 2016 with qualified majority. The Commission considers that the common position of the Council reflects the original goals of the Commission's proposal and takes into account many concerns of the European Parliament. Although on certain elements, the common position differs from the Commission's original proposal, the Commission considers that it represents a carefully balanced compromise and is satisfied that it covers all issues considered essential by the Commission when adopting its proposal.

3.2 Amendments of the European Parliament accepted by the Commission and incorporated in full, in part or in principle in the position of the Council at first reading

Protecting consumers from being misled about the nature and quality of food.

The European Parliament introduced an amendment which requires enforcement authorities to take account of the likelihood that consumers might be misled about the nature, identity and properties of food when performing risk-based controls. The amendment was acceptable to the Commission and Council as it is in line with the general aim to effectively address the violation of rules perpetrated through fraudulent or deceptive practices.

European Reference Centres for the authenticity and integrity of the agri-food chain.

The European Parliament proposed the establishment of an European Reference Centres for the authenticity and integrity of the agri-food chain. These centres should help the Commission and the Member States to prevent, detect and combat fraud related to the agri-food chain, by providing specialised knowledge and specific analyses. This was accepted by the Commission and the Council.

Protection of whistle-blowers. The European Parliament introduced an amendment which aims at protecting people that report potential infringements. In particular, Member States would be obliged to have effective mechanisms in place to protect whistle-blowers against retaliation, discrimination or other unfair treatment. This was accepted by the Commission and the Council.

European Reference Centres for animal welfare proposed by the Commission.

The European Parliament introduced an amendment turning the establishment of such centres into a legal obligation. Furthermore, the Parliament proposed that the coordinated scientific assistance provided by the Centres should be offered to both competent authorities and relevant stakeholders. This was acceptable to the Commission and the Council as the evidence gathered by the Commission through research work and studies points to the need to establish such reference centres.

3.3 Amendments of the European Parliament rejected by the Commission and incorporated in full, in part or in principle in the position of the Council at first reading

Removal of plant reproductive material from the scope.

The European Parliament proposed to remove official controls on plant reproductive material rules from the scope of the Regulation. The Commission would have preferred to include them in the scope to allow for a more integrated approach to official controls and harmonisation of control rules in this sector across Member States. The Council, however, supported the European Parliament's amendment. In the spirit of compromise, the Commission accepts the Council's position.

3.4 Amendments of the European Parliament accepted by the Commission in full, in part or in principle, but not incorporated in the position of the Council at first reading

Official controls on marketing standards for agricultural products.

The Commission accepted the European Parliament's amendment to extend the scope of the proposal to marketing standards and rules for agricultural products as governed

by the provisions of Regulation (EU) No 1308/2013. This was not fully acceptable for the Council resulting in a compromise where the scope of the official controls Regulation would cover those checks carried out under marketing standards legislation which identify possible fraudulent or deceptive practices. The Commission can agree to the Council position as a significant number of strengthened official control rules, aimed at identifying and deterring fraudulent practices, would apply to these products.

Financial penalties applicable to fraudulent or deceptive practices to be set at an amount that is at least double to the economic advantage sought by the perpetrator. The Commission accepted the European Parliament's amendment for having tougher financial penalties for fraudulent behaviours. The Council position resulted in a compromise according to which financial penalties need to reflect the economic advantage or a percentage of the operator's turnover. This was based on the consideration that it would be extremely difficult to exactly calculate the economic advantage sought. The Commission can agree to the Council position as the compromise still results in more stringent rules for financial penalties to better deter fraudulent or deceptive practices.

3.5 Amendments of the European Parliament rejected by the Commission and not incorporated in the position of the Council at first reading

Deletion of rules on mandatory fees for official controls. The European Parliament introduced amendments which rejected mandatory fees in favour of the Member States' discretion to apply them. The European Parliament also rejected the exemption for microbusinesses from mandatory fees. The amendments were rejected by the Commission as they would go against the Commission's objective to ensure a sustainable financing of control authorities, and a more equitable participation of operators in the financing of the control system. The amendments were also rejected by the Council, which in its position instead requires mandatory fees in sectors where, based on risk, more resource intensive controls are necessary, such as in slaughter houses and on imports. Furthermore, the Council position allows Member States to take account of the interests of small businesses to reduce fees. The Commission can accept the Council position as it would bring about a sustainable influx of financial resources in sectors of the agri-food chain where controls are most necessary and where the risk of market distortion in the absence of mandatory fees is higher. Also the Commission proposed rules on fees transparency have been largely retained. Those rules would further promote greater consistency in the implementation of fees across the EU.

Permanent presence of an official veterinarian. The European Parliament proposed that the permanent presence of an official veterinarian should be required during ante- and post-mortem inspections. Furthermore, it proposed that the possibility of involving slaughterhouse staff during official controls, under the supervision of an official veterinarian, should be limited to poultry and lagomorphs. The Commission rejected these amendments, since they would undermine the objective of enabling – without lowering the level of food safety – a more efficient use of control resources and a reduction of burden on competent authorities. On the basis of a similar reasoning, the Council also rejected most of these amendments. According to the Council's position, the conditions for flexibility will be established by delegated and implementing acts.

Mandatory channelling and systematic official controls on "foods containing products of animal origin" entering into the Union. The European Parliament proposed that "foods that contain products of animal origin" should be added to the categories of goods to be subject to mandatory systematic controls at border control posts. The Commission rejected this amendment, as not all "foods that contain products of animal origin" present a level of risk that requires them to be channelled to, and systematically controlled at, a border control post. The Council also rejected these amendments, since they would be disproportionate and unnecessarily disruptive of trade.

Veterinary checks on all products of animal origin at the border. The European Parliament introduced amendments setting out an obligation for physical checks on animals and on all products of animal origin entering the Union, to be carried out by an official veterinarian. The Commission rejected these amendments since physical checks on certain products of animal origin, such as powdered milk and canned meat, do not necessarily require the veterinary expertise. Furthermore, this would be inconsistent with one of the core objectives of the proposal, which is to enable a more efficient use of control resources. On the basis of a similar reasoning, the Council also rejected these amendments from the European Parliament. The Council compromise position requires official veterinarians to perform physical checks on consignments of animals and consignments of meat and edible offal. The Commission can accept the compromise as, albeit more prescriptive than the Commission proposal, it allows a more efficient allocation of veterinary resources.

3.6 New provisions introduced by the Council

As regards the financing of official controls, substantial changes were made by the Council compared to the Commission proposal, basically introducing a mandatory fees regime similar to the current one. The Commission can accept (as explained above) the Council position as it would ensure long-term financial sustainability for those official controls which are most resource intensive. Furthermore, rules on fees transparency, concerning the calculation of fees, as proposed by the Commission have been essentially retained. In addition to this, the Council introduced many amendments which further develop other key objectives of the proposal, such as the obligation for Member States to facilitate the cooperation between competent authorities and law enforcement authorities, public prosecutors and judicial authorities.

The following provisions add to the scope and requirements of the proposal.

Derogations for meat inspection of certain species. The Council added an empowerment for the Commission to lay down specific derogations from the rules on meat inspection as regards reindeer (*Rangifer tarandus tarandus*) and grouse (*Lagopus lagopus* and *Lagopus mutus*), in order to allow the continuation of longstanding local and traditional customs in certain parts of the Union. Since derogation can only be allowed on condition that it would not affect the achievement of the objectives of this Regulation, the Commission can accept this provision in the spirit of compromise.

Derogations for border controls of unprocessed logs and sawn and chipped wood. The Council added an empowerment for the Commission to establish the

cases and conditions under which border control posts designated for the imports of unprocessed logs and sawn and chipped wood may be exempted from certain requirements as regards, for instance, premises, facilities and equipment. The Commission can accept this as it is necessary to take into account the needs of competent authorities in charge of official controls operating under specific geographical constraints, while ensuring the proper performance of the controls.

4. CONCLUSION

The Commission considers that the common position adopted by the Council with qualified majority reflects the original goals of the Commission proposal and takes into account many concerns of the European Parliament. Although on certain elements, the common position differs from the Commission's original proposal, the Commission considers that it represents a carefully balanced compromise and is satisfied that it covers all issues considered essential by the Commission when adopting its proposal.

For the reasons outlined above the Commission supports the common position adopted on 19 December 2016.