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NOTE

From:	Presidency
To:	Permanent Representatives Committee
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Subject:	Draft Council Conclusions on the role of law enforcement cooperation in combating food crime

1. The Law Enforcement Working Party at its meetings on 16 July, 12 September and 6 November 2014 discussed the Presidency's proposal relating to the role of law enforcement in combating food crime, aimed at enhancing international law enforcement cooperation in this area.
2. The draft Council Conclusions on this issue were also presented to the Working Party on Foodstuffs on 19 September 2014.
3. Taking into account the outcome of these discussions and written contributions of the Member States, the LEWP agreed to the text of the draft Council Conclusions on the role of law enforcement cooperation in combating food crime as set out in the Annex through a subsequent written procedure, with a UK scrutiny reservation.
4. On this basis, the Permanent Representatives Committee is invited to examine the outstanding UK reservation with a view to the adoption of these Conclusions by the Council on 4-5 December 2014.

**DRAFT COUNCIL CONCLUSIONS ON THE ROLE OF LAW ENFORCEMENT
COOPERATION IN COMBATING FOOD CRIME**

THE COUNCIL OF THE EUROPEAN UNION

HAVING REGARD to the fact that the production, distribution and placement on the market of fraudulent or counterfeit food products or substances used for the production or marketing of foods are becoming an increasingly attractive business for members of organised crime groups; that it can be said that substandard and counterfeit food represents a major emerging criminal market, capable of exploiting the complexity of a globalised food supply chain;

HAVING REGARD to the 2013 EU Serious and Organised Crime Threat Assessment (SOCTA), which states that in addition to the traditional counterfeiting of luxury products, organised crime groups are now also counterfeiting everyday consumer goods, including foodstuffs, entailing potential serious adverse consequences for the health of EU citizens;

HAVING REGARD to the fact that fraudulent and other deceptive practices deceive consumers as to the characteristics of the foods and undermine the interests of law-abiding business;

HAVING REGARD to the fact that one of the political priorities of the Stockholm Programme for the period 2010-2014 is to strengthen Europe's security, and that special attention should be paid to the application and development of existing tools as well as to enhancing the fight against types of criminal offences with cross-border implications that can affect the daily life of European citizens;

HAVING REGARD to the comprehensive legislative framework designed to ensure a high level of protection of consumers while taking into account, among others, the safety and quality of food placed on the EU market, and in particular to Regulation (EC) No 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, to Regulation (EC) No 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, and to Regulation (EU) No 1169/2011 on the provision of food information to consumers;

HAVING REGARD in particular to the fact that Regulation (EC) No 882/2004 equips food chain authorities in the Member States with important control and cooperation instruments for the purposes of detecting and fighting violations of the rules applicable to foods, and, among those instruments, to the mechanisms of administrative assistance and cooperation for the purposes of cross-border enforcement of food law requirements;

HAVING REGARD to the ongoing European Union efforts to strengthen the fight against fraudulent practices along the food chain and to step up cooperation across borders between national competent authorities by means of a series of measures launched in 2013 in the wake of the horsemeat scandal, and in particular to the establishment of a EU Food Fraud Network consisting of representatives from the Commission and the 28 Member States as well as to the planned development of an IT tool for information exchange purposes;

UNDERLINING that there is currently no harmonised definition for food fraud in the EU legislation and that a study has been launched to assess the impact of divergent national definitions on the enforcement of EU legislation;

STRESSING that a coherent, integrated approach throughout the investigation and prosecution process should be developed in order to make the fight against organised and serious international crime more integrated, efficient, transparent and accountable as part of a policy of deterrence, while guaranteeing fundamental rights and ensuring that the promotion of cooperation and the exchange of experience between Member States' authorities by all possible means could contribute to this objective;

RECOGNISING that the phenomenon of illicit trade in adulterated food products is a global problem which requires action in collaboration with bodies outside the EU, such as the Council of Europe in view of its work on the drafting of food crime convention following the positive example of the Medicrime Convention in the pharmaceutical sector;

WELCOMING the findings and the conclusions of the White Paper on Transnational Organised Crime of the European Committee on Crime Problems (CDPC) of the Council of Europe of 25 June 2014;

CONSIDERING that the Internet facilitates the distribution of fraudulent branded food products delivered in consignments, sent in particular by express or postal freight, allowing perpetrators to remain anonymous, and that it presents an additional challenge for law enforcement authorities;

DECLARING that, since food crimes cannot be combated successfully through isolated measures, an integrated and multifaceted approach is necessary;

RECOGNISING the positive results achieved by international police and customs during operation OPSON, coordinated by Interpol and Europol and aimed at combating counterfeit and substandard food and beverages;

TAKING NOTE of the conclusions of the Conference "Combating Food-related Crime", held in Brussels on 27 and 28 February 2012 and of the outcome of the Conference on food fraud ("A joint effort to ensure the safety and integrity of our food") held in Rome on 23-24 October 2014;

DECLARING that there is a need for Member States to ensure cooperation between the various authorities involved, such as competent food safety authorities and agencies, as well as customs and police authorities, and including the private sector;

TAKING INTO CONSIDERATION the need for a police approach to the world of food safety, as already successfully demonstrated in certain Member States, where specialist investigative "food departments" have been set up, comprising both police officers and sanitary inspectors;

INVITES THE MEMBER STATES AND THE COMMISSION to propose that the Council of Europe study the feasibility of a Council of Europe convention on action against food crime, including substantive and procedural criminal law measures as well as preventive measures, and to strongly support such a study;

INVITES THE MEMBER STATES:

(1) to consider promoting adequate training for the personnel of competent law enforcement authorities and police who are active in the field of combating food crime, and to involve experts from the relevant stakeholders, thus covering the private and public sector;

(2) to make all the necessary efforts in improving operational cooperation, including exchange of intelligence and information, in line with national and international legislation, between all authorities involved, such as competent authorities responsible for the enforcement of food law requirements, customs authorities and police and other law enforcement agencies;

(3) to consider providing the possibility for business operators and private stakeholders to gather information and share with law enforcement authorities, in a confidential manner, intelligence on suspected fraudulent activities in the food supply chain;

(4) to encourage the sending of information relating to food crimes to the relevant Focal Point (FP) COPY managed by Europol;

(5) to fully benefit from the Europol Platform for Experts (EPE) on the Internet, developed in the framework of knowledge management, and to make an effort – in accordance with applicable law – in improving the exchange of photographs of seized products, packaging methods and expert opinions;

(6) to set up, where necessary, Joint Investigation Teams and organise Joint Operations in order to promote cooperation in combating food crime;

(7) to ensure that specific official control activities as laid down in Regulation (EC) No 882/2004 are planned and conducted with a view to detecting possible fraud, in addition to other official controls carried out to verify compliance with food law and feed law requirements;

(8) to fully engage their competent authorities in the duties of administrative cooperation and assistance between Member States provided for in Title IV of Regulation (EC) No 882/2004, so that the information and data exchanged through those mechanisms is comprehensive and enables effective cross-border investigations and enforcement;

(9) to make full use of Eurojust as regards assisting and coordinating criminal investigations and prosecution, and the improvement of judicial cooperation in relation to food crime within its mandate;

(10) to ensure that financial penalties for food law violations are effective, proportional and dissuasive;

(11) to consider the possibility of submitting project proposals (for example, as regards studies, training courses, joint operational teams) with a view to obtaining EU funding (notably within the EU Policy Cycle framework) for the purpose of combating food crime;

(12) to encourage specific awareness-raising programmes and campaigns concerning fraud and counterfeiting along the food supply chain and the possible health risks for consumers;

WELCOMES the Commission's comprehensive approach to strengthening the fight against fraudulent and deceptive practice along the food supply chain, and

ENCOURAGES the Commission to continue its work in that area and to develop any further action that would be necessary to ensure a high level of protection for public health and the protection of consumer's interests, including fair practices in food trade;

INVITES EUROPOL to consider establishing a dedicated subproject focusing on food crime within FP COPY;

INVITES CEPOL to consider the possibility of developing training modules and exchange programmes for senior police officers in the field of combating food crime and to examine the possibility of expanding such training to other competent law enforcement authorities.