



# Food and Feed eCommerce control - EU action plan

Gudrun Gallhoff / Georg A. Schreiber  
SANTE/G3: Official controls and eradication of  
diseases in animals

- A. Legislation applicable to official eCommerce control of food
  
- B. Action plan for the strengthening of official eCommerce control of food

## Regulation (EC) 178/2002 – *Article 3 on Other definitions*

- 2. **'food business'** means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food;
- 8. **'placing on the market'** means the holding of food or feed for the purpose of sale, including offering for sale or any other form of transfer, whether free of charge or not, and the sale, distribution, and other forms of transfer themselves;

## Regulation (EC) 178/2002 – *Article 16 on Presentation*

Without prejudice to more specific provisions of food law, the labelling, advertising and presentation of food or feed, including their shape, appearance or packaging, the packaging materials used, the manner in which they are arranged and the setting in which they are displayed, and the information which is made available about them through whatever medium, shall not mislead consumers.

# Regulation (EC) 1169/2011 – *Article 14 on Distance selling*

1. Without prejudice to the information requirements laid down in Article 9, in the case of prepacked foods offered for sale by means of distance communication:

(a) mandatory food information, except the particulars provided in point (f) of Article 9(1), shall be available before the purchase is concluded and shall appear on the material supporting the distance selling or be provided through other appropriate means clearly identified by the food business operator....

# Official Control Regulation

## *Article 35 on online sampling*

1. In the case of animals and goods offered for sale by means of distance communication, samples ordered from operators by the competent authorities without identifying themselves may be used for the purposes of an official control.

# Official Control Regulation

## *Article 135 (2) on measures*

Where the non-compliance is established, the competent authorities shall

(i) order the cessation for an appropriate period of time of all or part of the activities of the concerned operator and, where relevant, of the Internet sites it operates or employs;

## Case law of ECJ *C-585/08, C-144/09*

The following matters, the list of which is not exhaustive, are capable of constituting evidence from which it may be concluded that the trader's activity is directed to the Member State of the consumer's domicile:

- international nature of activity
- language or currency
- telephone numbers with an international code
- ...



# Case law of ECJ

## C-324/09

*Where, ..., the operator [e-platform] has provided assistance which entails, ..., optimising the presentation of the offers for sale in question or promoting those offers, it must be considered not to have taken a neutral position ... but to have played an active role of such a kind as ... control over, the data relating to those offers for sale. It cannot then rely, ..., on the exemption from liability referred to in Article 14(1) of Directive 2000/31.*

# Conclusion on first part

- **Legislation, harmonised, complete and ready for Digital Single Market**

- A. Legislation applicable to official eCommerce control of food
- B. Action plan for the strengthening of official eCommerce control of food**

# Better Training for Safer Food (BTSSF)

- Training for control staff on e-commerce of food
  - Since 2014
  - All Member States and EFTA
  - 200 participants trained (until 10/2016)
- Advanced training for control staff on e-commerce of food
  - Since 2016
  - All Member States and EFTA
  - Requirement for participation: expertise in online investigations
  - 30 participants trained

# WG on the Strengthening of the Enforcement of EU Agri-Food Legislation on Internet Sales of Food

- Questionnaire to get insight in the level of official e-commerce control and the difficulties of enforcement
- First meeting of e-commerce network
- Webinars of small wg to elaborate proposals
- Second meeting in December

# Answers to questionnaire - Activities of EU Member States (2015)

- Product searches (up to 2000 products per MS)
- Registration of eFBO (up to 1000 eFBO per MS)
- Mystery shopping (up to 50 products per MS)
- Information of consumers how to minimise risks when buying food online
- Information of eFBO on requirements, obligations and responsibilities
- Development of (half-)automated control software

# Proposals for SANTE actions in 2017

- Adjustment of RASFF and AAC formats to the needs of eCommerce control
- Coordinated control actions
  - Food supplements
  - Non-authorized novel foods
- Establish contact points with eCommerce platforms (e.g. eBay, amazon, alibaba)
- Establish cooperation agreements with third countries

# Conclusions

- **Legislation, harmonised, complete and ready for Digital Single Market**
- **Enforcement at different levels in the MS**
- **SANTE's actions designed to get all MS on board in the enforcement of EU Agri-Food Legislation on Internet Sales of Food**





European  
Commission

Thank you  
for your attention!