

COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT
on the application of Article 14
of Council Directive 89/397/EEC of 14th June 1989 on the official control of
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Introduction

Directive 89/397/EEC harmonises the general principles governing the carrying out of the official control of foodstuffs. This control also covers additives and materials which come into contact with foodstuffs and is aimed at preventing health risks, protecting consumer interests and ensuring fair trade.

The Directive allows Member States a certain degree of freedom as to the practical means of carrying out inspections "so as not to interfere with systems of proven worth which are best suited for the particular situation in each Member State". It is fair to say however, that substantial differences exist between the official food control systems in each Member State.

Article 14 of this Directive obliges Member States to draw up forward programmes laying down the nature and frequency of the inspections to be carried out regularly and to send to the Commission all the necessary information on the implementation during the previous year of their inspections programmes. The statistics, which represent these inspection results, should provide a general impression of the state of affairs of official food control in the Community. They serve as a source of useful information for both the Commission and the competent authorities of the Member States and will help to establish mutual confidence in the functioning of the internal market.

Right from the beginning, the Commission has tried, in consultation with the Member States, to harmonise the way individual returns are communicated to the Commission so that the inspection results are obtained in a comparable manner. Caution must be used however, when these results are compared, not only because of the different way the control services operate, but also because of the absence of common quality control standards both for laboratories and methods of analysis.

Article 14 also requires the Commission to transmit to the Member States a recommendation concerning a coordinated programme of inspections for the following year, the implementation of which has to appear as a separate section in the statistics.

In close cooperation with the Member States, the Commission prepares each year a list of subjects on which the Standing Committee for Foodstuffs has to be consulted.

A contribution on an informal and expert basis to the drawing up of these coordinated programmes is also given by FLEP (Food Law Enforcement Practitioners), an independent organisation of food control officials in the EC and EFTA countries.

The last paragraph of Article 14 requires the Commission, five years after the notification of Directive 89/397/EEC to transmit to the Council a report on the application of that article, accompanied if necessary by any appropriate proposals. This report puts this obligation into effect. It consists of three parts: chapter I refers to the programmes of inspection, chapter II to the coordinated programmes of inspections and chapter III to conclusions and Commission recommendations.

I

Member States' Programmes of Inspection

Member States are requested to send to the Commission all the necessary information on implementation during the previous year of their inspection programmes, specifying

- the criteria applied in drawing up these programmes
- the number and type of inspections carried out
- the number and type of infringements established.

In June 1990, a working group of experts from Member States and the Commission developed a format which is now used by all Member States to send their statistical results to the Commission (Annex I). It provides an overall view of the official control activities: coverage of the food sector, distribution by categories of infringement (hygiene, contaminants, composition, labelling) and sampling and analysis by categories of products including the total number of samples and infringements.

Directive 89/397/EEC applies without prejudice to more specific regulations and the format refers to all foodstuffs with the exception of those where results of inspection need reporting within the framework of the other, more specific Directives.

The results for 1991 and 1992 were examined during the meetings with the Member States in the framework of the working group "foodstuffs legislation, subgroup official control of foodstuffs".

The objectives were:

- to have a global view on how the official control of foodstuffs is carried out in every Member State

- to try to evaluate general trends
- to provide an exchange of information in order to improve the control-system in each Member State.

Evaluation of the system

The transmission to the Commission of standardised information on food control results has required a great effort from the Member States, which had to adapt their own reporting systems. This has not always been easy, especially when the control is executed by independent regional or local authorities.

Nevertheless all Member States sent information on the results of their official food controls by using the required format and some accompanied them with additional information which made the results easier to understand.

Not all statistics referring to these two years are complete but there is a clear improvement in the way the 1992 statistics have been prepared in comparison with those of 1991. This made it possible to draw some conclusions from the results received. For instance, in those Member States which returned a complete format, the percentage of the actual number of visited establishments during the year under consideration and the number of establishments eligible for official food inspection is more or less comparable. (D: 96%, DK: 96.5%, L: 71%, UK: 70%). Furthermore, it turns out that the number of inspections on average is about twice as high as the number of visited establishments (D: x1.95, DK: x1.95, L: x1.76, NL: x2,5, UK: x2.1).

So far as the incidence of infringements, which refer to on the spot controls, is concerned, almost every Member State has a comparable pattern with most infringements in the field of hygiene, followed by additives, contaminants and composition and finally labelling and presentation. This may reflect that Member States put great emphasis on hygiene inspections and carry out inspections in high risk areas.

From discussions within the working group it became clear that some apparent discrepancies, such as the number of infringements mentioned under the heading "contamination other than microbiological" could be properly explained as it appeared that some Member States included undesirable substances (foreign bodies, dead insects etc.) under the heading "contamination other than microbiological" and others did not.

Also, Member States use different interpretations of the basic concepts of the statistics like, for instance, that of "infringement". Sometimes, non-conformity with legal requirements gives rise to an oral warning of the competent authorities. In certain Member States such warnings have a formal meaning and, consequently are reported in the statistics, whilst in others this is not the case.

It is for this reason that the Commission in association with the working group, is preparing a vade mecum to be used in the preparation of the statistics, which hopefully will reduce the number of inconsistencies. Member States will also be asked to add an explanatory note to their reports.

II

The coordinated programmes of inspection

Member States send the Commission their inspection results and, in the opinion of the Commission, the statistics received form an appropriate base for subsequent discussions with the Member States on the coordinated control programme in the Community for the following year. For this reason the Commission asked the Member States in February 1991 to provide the information relating to 1990 on a voluntary basis as, strictly speaking, the requirement of Article 14 was not yet in force in 1991.

Five Member States reacted to the Commission's request and the Commission decided to draft a recommendation based on the results of the statistics received. It was entirely focused on the control on microbiological contamination of a number of perishable products but the Standing Committee for Foodstuffs did not support this approach and suggested to involve experts from the Member States in the drawing-up of the coordinated programme of inspections. The Commission then decided to withdraw its proposal for a coordinated programme of inspections for 1992 and convened in the course of that year a working group of experts from the Member States to discuss the programme for 1993.

Together with these experts, the Commission succeeded in drawing up a proposal for the 1993 programme which was acceptable for the Standing Committee for Foodstuffs. This programme (OJ No L 350/85 of 1/12/92) contains a recommendation for the Member States to take samples of the following products and to analyse the specific parameters.

1. Adulteration of orange juice.
2. Nitrates and nitrites in baby foods containing vegetables.
3. Weight inspections for deep frozen seafood
4. Microbiological tests on edible ices.
5. Microbiological tests in ready-made foods.

The Commission decided not to set rates for sampling but suggested that sampling must be such that it provides an overview of the market in the foodstuffs concerned. No stipulations were laid down with regard to methods of analysis. Each Member State will take the samples in the context of its own official food control programme and analyse them on the basis of its standard rules. The methods used must be mentioned or described briefly.

The 1994 recommendation was accepted by the Standing Committee for Foodstuffs (OJ No. L 80/24 of 24/3/94) and comprises the following subjects.

1. Aflatoxin B1 in products liable to contain aflatoxin B1 especially those intended for children.
2. *Lysteria monocytogenes* in meat based pâtes, sold in the retail sector.
3. Adulteration of frozen, fish-based products.
4. Adulteration of goat's and sheep's cheese.

As a consequence of the discussion in the working group, this time each subject was accompanied by a suggested method of analysis. In order not to overburden the budget for laboratory costs in certain Member States, it was decided to limit the number of subjects to four.

Discussion on the 1995 programme started early this year and the working group was able to agree on the following criteria for the future coordinated programmes of inspection:

- if subjects relate to products, these should be freely sold on the market in many, preferably all Member States
- controls should refer to problem areas
- controls may include on the spot inspections
- the programme should reflect elements of both protection of public health and fairness in trade
- the required methods of analysis should be reasonably applicable by the control laboratories of all Member States
- controls covered by other Community control programmes should be avoided
- controls should refer to the enforcement of Community legislation.

The idea is to use those criteria as a basis for a selection procedure, it does not necessarily mean that each chosen subject complies with all the criteria.

Although it is too early to draw conclusions as the results of the first (1993) control programme are not known, it is felt that the execution of these programmes contribute to the mutual confidence between the competent authorities of the Member States.

Conclusions and Recommendations

The enforcement of food law in the Community is basically a matter for the Member States. Control Directive 89/397/EEC only harmonises the general principles of food control but the preamble refers to the necessity for Member States to lay down their inspection programmes with appropriate criteria and arrange for coordinated programmes at Community level with a view to the completion and operation of the internal market.

The Commission feels that the results of the inspection programmes and the coordinated programme are inter-related and that problem areas, shown by the statistics should form the basis for the coordinated programme of the next year. As long as the results of the statistics are not conclusive, the present procedure should be maintained, however, especially since there is a growing consensus between Member States and the Commission on how to arrive at a recommendation for a coordinated programme of inspections.

The longstanding tradition of food law enforcement and its specific character in each Member State - in fact, the laws and regulations on foodstuffs belong to the oldest in society - probably explain why the statistics received from the Member States are difficult to compare. The format agreed upon by Member States and the Commission aims at a uniform representation of the inspection results but despite its rather detailed structure Member States use different interpretations of concepts like "establishment", "infringement", "inspection" and "sample". At the April 1994 meeting of technical experts and the Commission it was agreed that the Commission would prepare a vademecum, which will try to harmonise these concepts. Furthermore, each Member State will be asked to add an explanatory memorandum to their statistics, describing in more detail what these concepts mean.

As already mentioned in the Introduction, the absence of common quality control standards both for laboratories and methods of analysis used is another reason why the individual statistics give difficulties in interpretation.

In 1993, the Council adopted specific provisions to further approximate the national legislation with respect to the official control of foodstuffs (Council Directive 93/99/EEC on 29th October 1993 on the subject of additional measures concerning the official control of foodstuffs). Notably articles 3 and 4 refer to these quality control standards but Member States have 60 months after the adoption of the Directive to bring into force their legislation to comply with Article 3. Until October 1998, therefore, this problem remains unsolved.

One of the provisions of this Directive is the establishment of a group of specific officials, appointed and designated by the Commission to cooperate with the competent authorities of the Member States to monitor and evaluate the equivalence and effectiveness of national food control systems.

Recent discussions with the Member States reveal that there is a clear need for such a group in order to provide practical guarantees that Community law relating to foodstuffs is being applied consistently throughout the Community.

The Commission wants this new service to start its work as soon as possible and preparatory work is already foreseen for this year.

It is envisaged to set up small équipes of 2-3 officials from both the Commission and Member States which will visit each Member State in order to discuss the official food inspection system in operation, notably in the light of the statistics and the results of the coordinated programme of inspections.

In a second phase, of indefinite duration, attention will be paid to control and enforcement itself, and in particular to how food law is applied with emphasis on aspects of Community interests.

It is believed that this Commission inspectorate could well start with 4 Commission officials of grade A, 1 B official (for statistical and filing matters) and 1 C official for secretarial work. It is proposed that the recruitment of these officials take place progressively, with 2 A officials being recruited annually during 1995-96.

As far as the participation of Member States is concerned, the Council and the Commission agreed that the Commission will seek a high level of cooperation with the competent authorities of the Member States with a view to establishing a list of specific officials who in particular make use of skills within those authorities with regard to the evaluation of official food control systems. The salaries of those officials will be paid by the Member States but travel expenses and subsistence allowances will be paid for by the Commission. A "fiche financière" belonging to this new service is attached (Annex 2).

To summarise: the results of the inspection programmes - the coordinated programmes included - are not mutually comparable yet. Individually, they should be considered, however, as important tools for the officials, meant in Article 5 of Council Directive 93/99/EEC to do their job.

MEMBER STATE _____

YEAR _____

Number and type of inspections carried out and infringements established (according to article 14 of Council Directive 89/397/EEC).

a) Control on the spot

Producers	Manufacturers	Importers	Distributors	Retailers	Restaurant keepers	Total
	and	and	and		and other caterers	
	packers	exporters	transporters			

Number of establishments
 Number of visited establishments
 Number of control visits
 Number of establishments
 with infringements (*)

Type of infringements (*)

Producers	Manufacturers	Importers	Distributors	Retailers	Restaurant keepers	Total
	and	and	and		and other caterers	
	packers	exporters	transporters			

Hygiene, general (handling procedures, equipment and condition of the premises)

Hygiene of personnel (in conformity with art. 8 of the Control Directive)

Composition (including raw materials and additives)

Contamination other than microbiological

Labeling and presentation

Others

(*) Only the ones which have led to formal action by the competent authorities.

b) Laboratory-results

Samples with infringements (*)

Product	Number of samples	Microbiological contamination	Other contamination	Composition	Labelling and presentation	Others	Total nr of samples
1 Dairy products							
2 Eggs and egg products							
3 Meat and meat products, game and poultry							
4 Fish, crustacea, molluscs							
5 Fats and oils							
6 Soups, broths, sauces							
7 Cereals and bakery products							
8 Fruits and vegetables							
9 Herbs and spices							
10 Non alcoholic drinks							
11 Wine							
12 Alcoholic drinks other than wine							
13 Ice and deserts							
14 Cocoa and cocoa preparations, coffee and tea							
15 Confectionery							
16 Nuts and nut products, snacks							
17 Prepared dishes							
18 Foodstuffs intended for particular nutritional uses							
19 Additives							
20 Materials and articles intended to come into contact with foodstuffs							
21 Others							

(*) Only the ones which have led to formal action by the competent authorities.

ANNEX II

FINANCIAL STATEMENT

Section 1 : financial implications

1. Title of the operation

Monitoring and evaluation of the equivalence and effectiveness of food control systems in the Member States by Commission staff assisted by national officials, as provided for in Directive 93/99/EEC.

2. Budget headings involved

A-110 : statutory staff
A-130 : missions
A-501 : data processing equipment
B5-300: internal market

3. Legal basis

Article 100A of the EC Treaty.

Council Directive 93/99/EEC of 29 October 1993 on additional measures concerning the official control of foodstuffs (Article 5).

4. Description of operation

4.1 Specific objectives

The objective of this operation is to enable the Commission, together with the competent authorities of the Member States, to control national food control systems in order to ensure that Community legislation on foodstuffs is applied uniformly throughout the Community so that the internal market can function properly. To this end, staff appointed by the Commission will be assisted on their missions by national officials from Member States other than that which is being controlled.

The operation should also allow the Commission's departments to act as mediators to solve problems between Member States and thus promote mutual recognition of their products.

4.2 Duration : unspecified. Needs will be reviewed at the end of 1996.

4.3 Population targeted:

directly : official food control bodies in the Member States

indirectly : economic operators in the foodstuffs sector

5. Classification of expenditure

5.1 non-compulsory expenditure

**5.2 non-differentiated appropriations for part A expenditure
differentiated appropriations for heading B5-300**

5.3 Revenue: nil

6. Type of expenditure or revenue

6.1 100% subsidy: no

6.2 Subsidy for joint financing: Payment of travel expenses and subsistence allowances of national officials who take part in control missions in the Member States

6.3 Interest subsidy: no

6.4 Other: statutory or contractual

6.5 Possibility of partial reimbursement: no

6.6 Change in revenue: no

7. Financial impact on appropriations for operations

Staff and mission expenditure is covered by part A. Travel expenses and subsistence allowances of national officials will be covered by heading B5-300 "Internal market". For 1995, expenditure is estimated at ECU 60 000 and for the following years ECU 70 000 will be needed. The cost of publishing reports, estimated at ECU 20 000 will also be covered by heading B5-300. Needs may be covered by appropriations requested in the 1995 preliminary draft budget. They will be the object of a request for the following years, and the expenditure will be incorporated into DG III's financial programming.

7.1 Method of calculating expenditure covered by heading B5-300

Travel expenses and subsistence allowances for national officials: average cost for a three-week mission for one person: ECU 5 000. Expenses shall be paid on the basis of an agreement drawn up between the Member State employing the official and the Commission.

Publication: estimated at ECU 20 000 based on previous experience (publication of opinions of the Scientific Committee).

7.2 Annual breakdown of cost

1994: token entry

1995: travel expenses and subsistence allowances of national officials : **ECU 60 000**

1996 and following years: travel expenses and subsistence allowances of national officials: **ECU 70 000**

Publication of mission reports: **ECU 20 000**

8. Fraud prevention measures

Expenditure will be controlled by the departments concerned and proofs of payment will be required. Pursuant to Article 2 of the Financial Regulation, the appropriations will be used in accordance with the principles of good financial management, including economy and cost-effectiveness.

Section 2: Administrative expenditure (part A of the budget)

1. Increase in the number of Commission staff

This involves recruiting extra staff, estimated at 4 A category officials or temporary staff (two in 1995 and two in 1996), 1 B category official and 1 C category official, depending on the results of the 1995 budget procedure and the Commission's decision concerning the allocation of human resources authorized by the 1995 budget.

2. Amount of staff and administrative expenditure

For staff, costs are evaluated on the basis of figures provided by DG IX.

For missions, an estimate has been given by DG III's financial department. The average mission lasts two weeks (meeting Ministry officials and visiting local departments). Average cost: ECU 2 500. The average cost of a preparatory mission is ECU 1 000. For data processing equipment, an estimate has been provided by DG III's data processing department.

Forecast administrative expenditure

1995 budget year

- Recruitment of two A category officials or temporary staff	: ECU 160 000
- Recruitment of one B category official	ECU 65 000
- Recruitment of one C category official (secretary)	ECU 50 000
- Data processing equipment for the new officials (4 PC + 2 IMP)	ECU 24 000
- 12 two-day preparatory missions for one person	ECU 12 000
- 12 two-week missions for one person	ECU 30 000

1996 budget year

- Recruitment of two A category officials or temporary staff : **ECU 160 000**
- 14 two-day preparatory missions for one person **ECU 14 000**
- 14 two-week missions for one person **ECU 22 500**
- Data processing equipment for the persons recruited
(2 PC and 1 IMP) **ECU 12 000**

Section 3: Elements of cost-effectiveness analysis

1. Objective and coherence with financial programming

1.1 Specific objective

The internal market in foodstuffs cannot function properly unless controls are considered equivalent and are therefore recognized by all the Member States.

Although the Member States are still responsible for the official control of foodstuffs, the Commission has a key role to play in this field, especially in checking whether controls are of a high standard, liaising between the control services in different Member States and, if necessary, acting as a mediator in case of dispute.

1.2 DG's financial programming: yes

1.3 General objective

The objective of this action is first and foremost to contribute to the proper functioning of the internal market and, more generally, to ensure the uniform application of Community law.

2. Grounds for the operation

Similar objectives could be achieved by setting up a "Food Agency" but this idea was rejected because it is not politically desirable to have too many agencies. Moreover, while it is difficult to put a figure to the exact cost of setting up a new agency, it would certainly be more expensive than recruiting several new officials. Also, given the nature of the tasks which will be assigned to the new officials, it is preferable for them to be totally independent of the Member States.

3. Monitoring and evaluation of the operation

3.1 Performance indicators selected

- number of control reports
- qualitative improvement of national controls
- number of disputes resolved

3.2 Details and frequency of evaluation

At the beginning of each year the team of officials will draw up a work programme which will later be assessed by a report. The report will be used as a basis for the following year's work programme.

3.3 Uncertainty factors

The main uncertainty factor is whether or not suitably qualified staff can be recruited for the job.

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