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DG Health and
Food Safety

OVERVIEW REPORT

Official Controls on Internet Sales of Food in EU Member States

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DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

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**OVERVIEW REPORT OF A SERIES OF FACT-FINDING MISSIONS CARRIED OUT IN
2017 CONCERNING OFFICIAL CONTROLS ON INTERNET SALES OF FOOD IN EU
MEMBER STATES**

Executive Summary

The objective of this report is to present an overview on how Member States have integrated into their official control systems, controls on the sales of food via the Internet. It is mainly based on the information obtained from Directorate-General Health and Food Safety fact-finding missions in seven Member States in 2017.

The competent authorities in all Member States visited recognise the necessity to enhance their controls related to the online sales of food and have taken steps to adapt their traditional inspection and sampling activities aiming to ensure that food supplied online is safe and subject to an appropriate level of official controls. The approach taken varies in the Member States visited since it has been adapted to existing competent authority structures and is dependent on the priority given by the authorities to this area.

It was apparent during the series of missions that the official controls over food sold online were rather limited and mainly focused on the registered food business operators. Non-compliances identified during controls were mainly related to labelling and health claim requirements. In a few cases, online marketing of dangerous substances as food supplements were identified. The identification of non-registered food business operators with an online presence has proved challenging due to the relatively limited resources assigned to this area and the fact that a considerable number of these operators can easily and rapidly enter and exit the online marketplace without being aware of their responsibilities. Adding to this, the presence of online sellers who actively try to avoid official controls by changing their digital identity is an additional hurdle for the competent authorities.

Although the proportion of food products sold online is low compared to other goods sold on the Internet, fast growth is anticipated in the coming years. This brings new business opportunities (new business models and changes in consumer behaviour are already acknowledged), but also further challenges for the official control of food sold via this medium. Cooperation and intelligence sharing between different authorities within and across Member States is crucial. Finally enforcement and cooperation with non-EU countries have proved, so far, to be the main constraints to effectively control food sold via the Internet.

It has been acknowledged during this series of missions that the competent authorities in the Members States are making continuous efforts to respond to the challenges brought about in the food sector by the digital economy and are equally eager to share their experiences and to learn from others.

Table of Contents

1	Introduction and Background.....	1
2	Objective and scope	4
3	Legal Basis	4
4	Organisation of the Internet sales of food	4
5	Overview of Main Findings and conclusions.....	6
5.1	National legislation and national guidelines	6
5.2	Competent authorities	9
5.2.1	<i>Responsibility</i>	9
5.2.2	<i>Scope of controls</i>	10
5.2.3	<i>Procedures</i>	10
5.2.4	<i>Equipment</i>	10
5.2.5	<i>Training</i>	11
5.3	Registration and approval	12
5.4	Official controls	13
5.4.1	<i>Action in case of non-compliance (including use of Rapid Alert System for Food and Feed (RASFF) and Administrative Assistance Cooperation (AAC) system)</i>	16
5.4.2	<i>Cooperation</i>	18
6	Matters for consideration by Member States	19
7	Actions taken or planned by the Commission services.....	22

ABBREVIATIONS AND DEFINITIONS USED IN THIS REPORT

Abbreviation	Explanation
AAC	Administrative Assistance Cooperation
CA	Competent Authority
CCA	Central Competent Authority
DG Health and Food Safety	Directorate-General for Health and Food Safety of the European Commission
DG JUST	Directorate-General for Justice and Consumers of the European Commission
EU	European Union
FBO	Food Business Operator
FLEP	Food Law Enforcement Practitioners
ISP	Internet service provider
MS	Member State/s
OECD	Organisation for Economic Co-operation and Development
PSP	Payment service provider
RASFF	Rapid Alert System for Food and Feed

1 INTRODUCTION AND BACKGROUND

E-commerce in the European Union (EU) has grown steadily in recent years. Today the EU is one of the largest e-commerce markets in the world. The percentage of people aged between 16 and 74 that have ordered goods or services over the Internet has grown year-on-year from about 50 % in 2007 to 68 % in 2017¹. The main reason for this change is the fact that e-commerce has brought many benefits to consumers over a decade, including wider choices at competitive prices, as well as easy-to-use and more secure payment options (Organisation for Economic Co-operation and Development-OECD, 2016)².

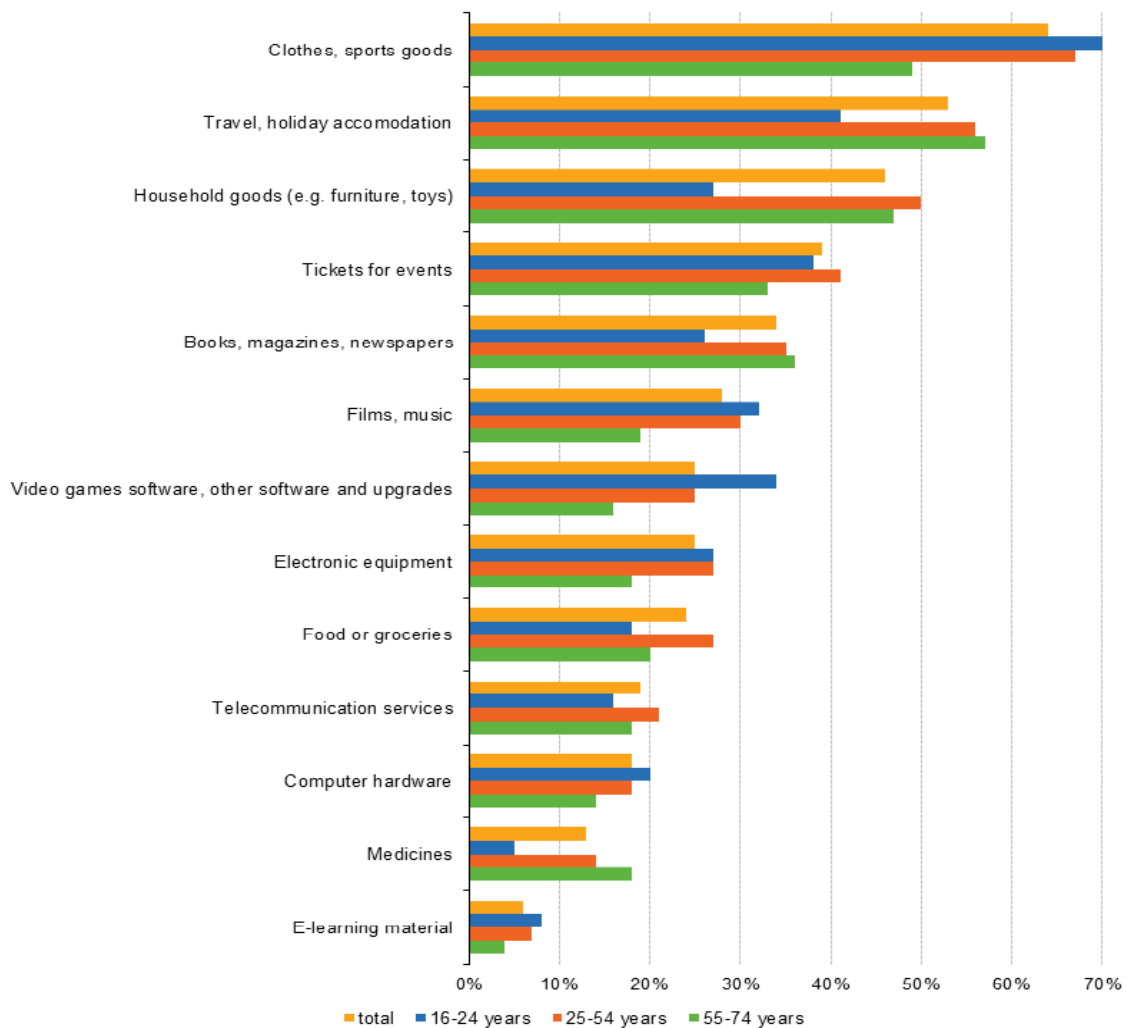


Figure 1. Percentage of individuals who ordered goods or services, over the Internet, for private use, in member states for 2017. [Eurostat: isoc_ec_ibuy] Food/groceries rank relatively low in the overall ranking of goods or services ordered over the Internet.

¹ See 2017 Eurostat Community Survey on Information and communication technology usage in households and by individuals, available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals.

² Consumer protection in e-commerce. OECD recommendation, Paris, 2016, OECD.

The online marketplace offers every kind of food, including fresh meat and fish. Moreover, an ever-increasing variety of food supplements is being made available online. Among those are products, which regularly give rise to serious health concerns. Given the range of products available and the fast growth of Internet sales of food, the Directorate-General for Health and Food Safety of the European Commission (DG Health and Food Safety) undertook number of actions aimed at assisting MS in their control tasks and contributing to enhance cooperation, effective controls and enforcement.

As part of these actions, this series of fact findings missions in seven MS in 2017 was carried out in order to evaluate how MS CAs have integrated into their official control systems, controls on the sales of food via the Internet.

In the context of its Digital Single Market strategy, the Commission has presented a three-pronged³ plan to boost e-commerce by tackling geo-blocking, making cross-border parcel delivery more affordable and efficient and promoting customer trust through better protection and enforcement.

Internet sales of food are increasing at EU level (Figure 2) with the percentage of individuals who ordered food or groceries over the Internet, in the different Member States varying (Figure 3). Similarly at global level there is also a growing trend. According to a survey carried out by Nielsen⁴ (2015) based on respondents with online access in 60 countries, one quarter of them indicated that they order grocery products online and more than half are willing to do that in the future.

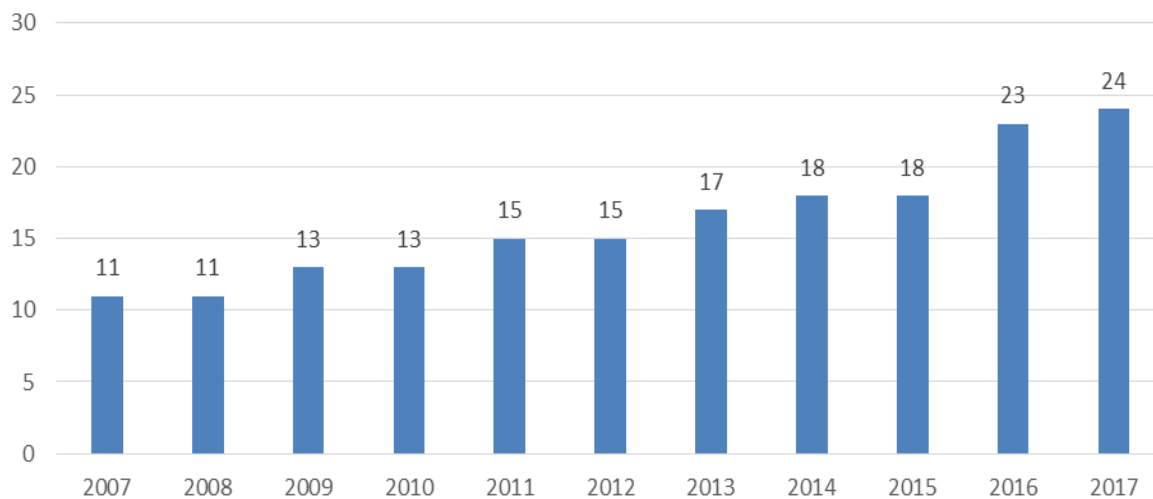


Figure 2. Percentage of online purchases of food/groceries in the EU (28 countries) over the last decade by individuals [Eurostat: isoc_ec_ibuy] Based on Eurostat data for 2017, 24% of individuals purchased food/groceries in the EU compared to 11% in 2007.

The information available in all Member States (MSs) visited indicate that Internet sales of food are rapidly growing in this highly dynamic market. Although a small percentage of total

³ http://europa.eu/rapid/press-release_IP-16-1887_en.htm

⁴ The future of grocery. E-commerce, digital technology and changing shopping preferences around the world, 2015, Nielsen.

food sales is conducted online, the pressure is increasing for all businesses to have an online presence. It was highlighted by the competent authorities (CAs) met during the series that foods with associated claims (e.g. for health, bodybuilding or beauty) are increasingly sold online or in some cases, exclusively online, with important social media input.

MS are facing new challenges related to Internet sales of food, notably, the evolution of online sales of certain weight loss supplements whose consumption proved fatal in some cases and other potentially dangerous substances marketed online as food supplements. Additionally, the OECD⁵ Recommendation notes that in several countries, a range of unsafe products, which have been prohibited from sale or recalled from traditional retail markets, are available via the Internet.

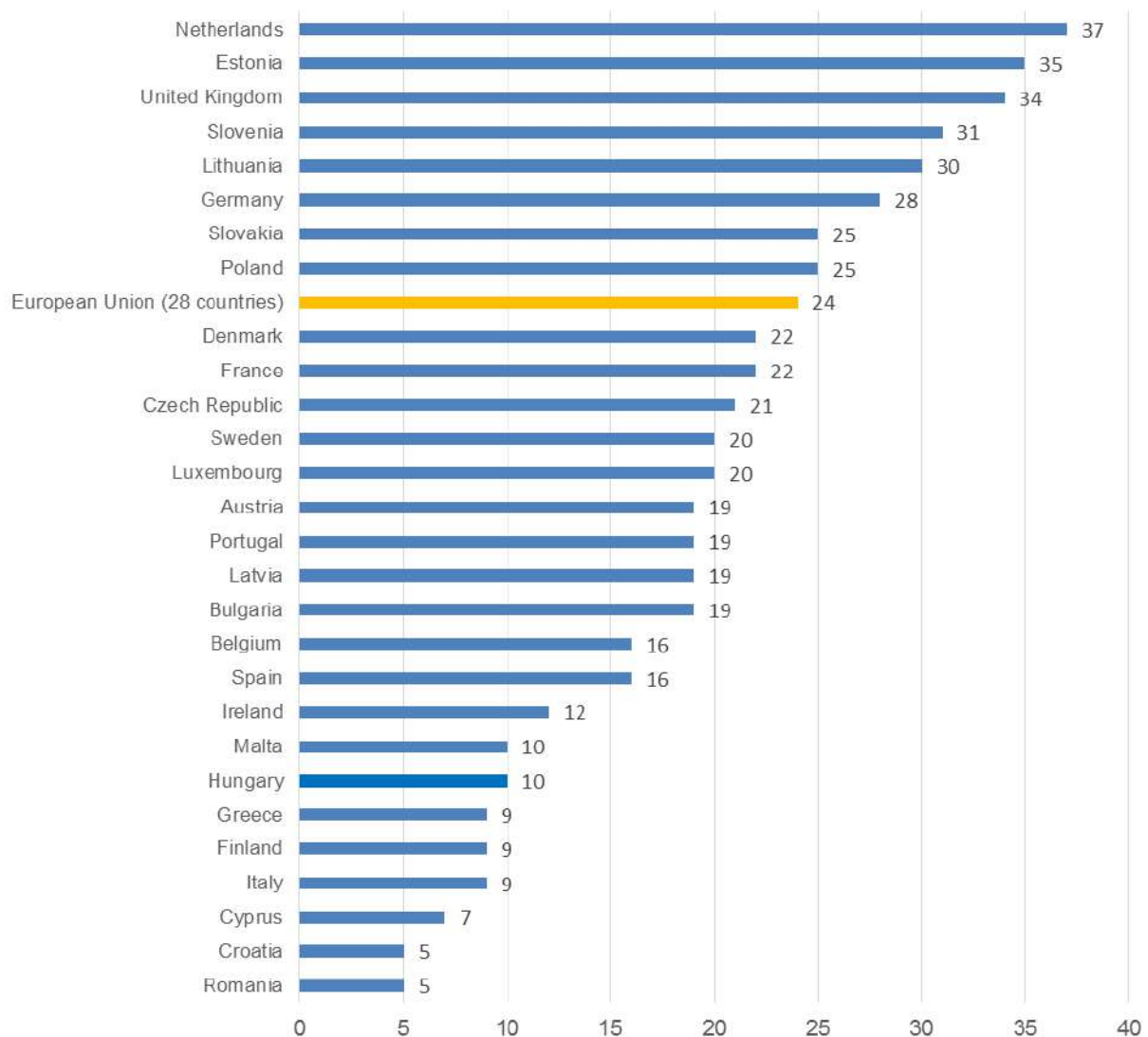


Figure 3. Percentage of individuals who ordered food or groceries, over the Internet, for private use, in MS for 2017. [Eurostat: isoc_ec_ibuy] The percentage of individuals who ordered food or groceries, over the Internet, for private use, in MS for 2017 varies from 5-37%.

⁵ Consumer protection in e-commerce. OECD recommendation, Paris, 2016, OECD.

2 OBJECTIVE AND SCOPE

The objective of this mission series was to gather information on how MS CAs have integrated into their official control systems, controls on Internet (online) sales of food⁶, and to gain a good understanding of CAs' approaches to the control of Internet sales of food.

The project covered official controls on business to business, business to consumer and cross-border trade. It also aimed at identifying both challenges as well as good practices in relation to the official controls.

3 LEGAL BASIS

The fact-finding missions were carried out in agreement with the CAs of the different MS visited.

4 ORGANISATION OF THE INTERNET SALES OF FOOD

Internet sales of food take place via different channels such as: own website of producer, trader (intermediary) or retailer's website and online platforms. FBOs may sell foods exclusively online or use also conventional shops. Retailers and individuals without a website may sell their products via sales platforms or social media networks. Food may be delivered to the consumer's residence or to lockers (a drawer from where consumers can pick up their goods purchased online by using a code provided) by post, parcel delivery services or via sellers' own transport or contracted transport. Another option is for the goods to be collected by the consumer at the retail shop or other designated location (*Picture 1*).



Picture 1. Picture of a parking place to pick up goods ordered online from a supermarket. The "click and collect" model allows customers to place orders online and pick them up at a store or other designated locations.

⁶ Food means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans (Article 2 of Regulation (EC) No 178/2002).

During the series, the FBOs pointed to several advantages of the online market compared to conventional channels both for the consumers and the FBOs:

- Online sales provide convenient solutions (home delivery is the key element) to consumers as to when and where the products are to be delivered. This is especially convenient for people living in remote areas, or people (such as senior citizens) who would like to avoid the nuisance of carrying heavy bags of groceries, people with reduced mobility or for families with young children and the full-time employed, for whom time and convenience is of the essence.
- For consumers, online sales can offer better food quality and freshness due to less handling and fewer transport steps.
- The reduction of intermediate transport steps allows competitive pricing similar to that of conventional supermarkets.
- The lack of availability of certain products on the traditional market (e.g. where national rules don't allow certain health products be sold without prescription, while in other countries they are sold over the counter) has contributed to the growth of Internet sales of certain food categories like food supplements.
- Online sales allow FBOs to identify customers that bought a specific product in cases of recall and provide consumers a variety of choice.
- Online sales bring opportunities for FBOs to widen their market and thereby generate an increase in sales. The Internet is an additional market place which in most cases cannot be ignored by traditional retailers.
- Internet helps retailers to reach potential customers that are situated far from their physical retail outlets.
- Online sales also give the possibility to FBOs to target specific niche areas and to address particular needs of certain segments of the population (e.g. vegans, people following specific type of nutrition) providing a variety of specific products.
- For those FBOs selling to other businesses (business to business e-trade) this type of activity ensures better productivity and efficacy in terms of placing orders and logistics.

However, they also identified a number of challenges:

- The most significant cited by traditional FBOs is increased competition from large online shops which in certain cases can sell products below the actual cost price in order to attract customers. Online sales make it easier for the consumer to compare and choose the lowest price. This allows the bigger online shops that have greater assets to lower the price to levels that impact on the market and eliminate competition from smaller business (both physical and online). As a result, prices and margins have decreased as digitization enables new business models and sales are concentrated on fewer but larger players.
- There is also an increasing need to invest more and more in advertising and according to FBOs met, considerable additional costs are incurred from the need to be sited prominently in Internet search engines.

- The implementation (for Internet sales) of the legal requirements on food information for consumers, novel food requirements and nutrition and health claims is considered a burden by the FBOs since it is difficult to keep the mandatory food information up-to-date on their websites, especially for small or medium size businesses.
- FBOs selling food supplements find it difficult to comply with the various and non-harmonised requirements in the different MS, where they market their products.

"Trust marks" may be used by some online shops selling food. To obtain a trust mark, online shops must fulfil certain criteria as set out by the trust mark provider. These criteria predominantly relate to financial and security aspects of transactions but may, in some cases, also require registration with the CAs. None of these criteria provide guarantees for food safety/quality. However, online sellers with trust marks consider that having such a mark provides them with a competitive advantage over their competitors.

Currently new business models are developing to address the needs of specific consumer groups. Business to business e-trade of food seems to be already quite well developed in some MS. In some MS there is also a growing trend towards reducing food waste and as a result, platforms or applications have been developed allowing private persons or food businesses operating from either private houses or conventional shops or restaurants to sell or share food with others online.

Food sharing/cook boxes is a new upcoming online food trend. Moreover, certain applications and social media networks have developed selling interfaces like normal marketplaces (applicable already in some countries). The CAs are aware of these new trends and are developing approaches to address them.

Online marketing and e-advertising are closely related to Internet sales. For the food sold over the Internet advertising is generally combined with associated claims which is also a relevant area targeted during official controls.

5 OVERVIEW OF MAIN FINDINGS AND CONCLUSIONS

5.1 National legislation and national guidelines

The majority of the MS visited have no specific national legislation in place for this type of sale. Existing EU food law and complementary national legislation which provide the legal basis for controls on food in general are also applicable when food is sold over the Internet. Some MS visited highlighted that their national rules contain some specific provisions applicable to Internet sales of food.

In two of the MS visited the national legislation gives official staff increased investigation powers which enable them to access information from different entities - not only from FBOs - and to use assumed identities to control the sale of goods and the supply of services over the Internet. In another MS, CAs also have powers of access to private dwellings in case of ongoing investigations when those are used as the physical address of the businesses in order to have a full picture of sellers' on-site activities.

In the majority of MS visited the central competent authorities (CCAs) have prepared/or are in the process of preparing comprehensive guides to assist the official control staff in their everyday tasks, in performing official controls of food sold online. In cases where no such guides were available, knowledge and know-how were shared through training events.

MS have also prepared relevant documents or campaigns aiming to help businesses who sell food online understand their obligations under food law, including the requirement to be registered. They also advise consumers on how to avoid possible pitfalls associated with online shopping in general.

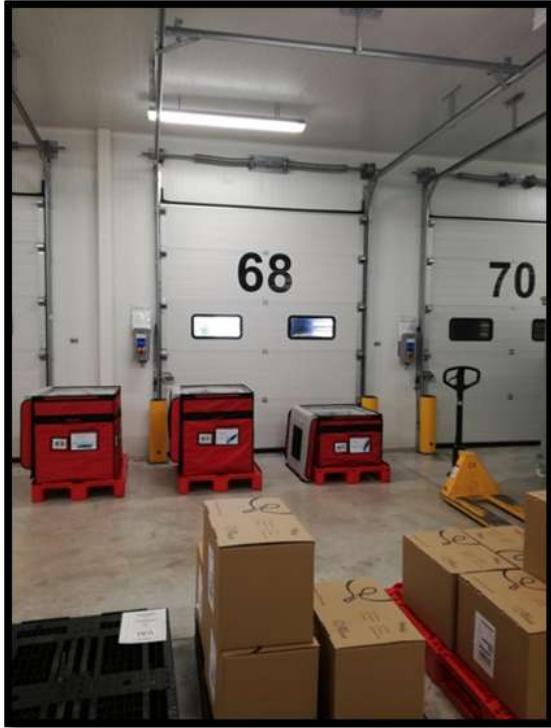
Certain MS have published guidance documents defining when a consumer to consumer sale over the Internet becomes business to consumer (e.g. based on volume/value of sales, frequency and continuity of such activities). In some MS visited this is left to the professional opinion of each control authority to assess, on a case-by-case basis, whether the activities are carried out with certain continuity and whether undertakings have a degree of organisation which implies that they need to be registered. In some other MS the need to register certain online traders based on the above-mentioned criteria is an area still under reflection.

Different views were expressed by the MS on the rules applicable to certain FBOs selling online (i.e. FBOs carrying out direct sales of small quantities of food of animal origin to the final consumer falling within the exemption for the localised marginal activity) and whether those could sell their products also online. Some MS consider that these sales can be concluded by means of Internet sales whereas others are of the view are that online sales cannot be considered as direct supply and a few others are still reflecting on this point.

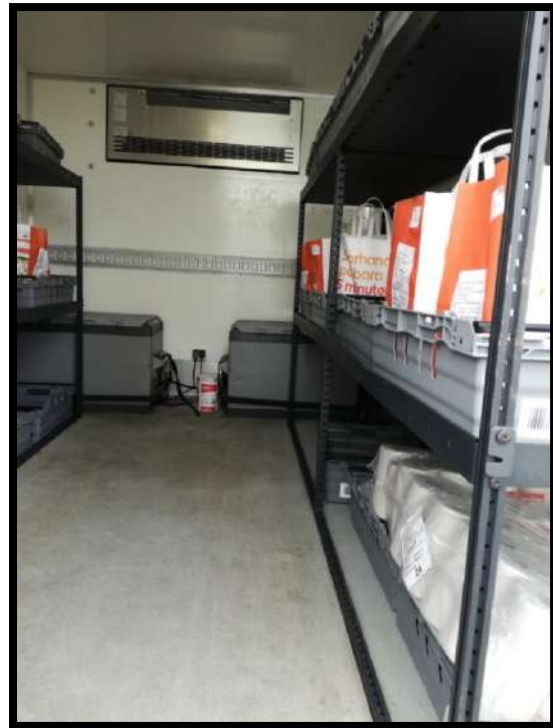
Regarding the temperature requirements applicable during the transport of parcels of refrigerated and frozen foods to the final consumer in non-refrigerated vehicles (e.g. postal or parcel services) for which there is no EU specific legislation, the MS visited have taken different approaches.

- In most MS, available industry guides or hygiene practice guides contain requirements on the maintenance of the cold chain. These either contain recommended temperatures from retail to consumers applicable for delivery of food sold online or state that during transport there should be no rupture of the cold chain (Pictures 2 and 3).
- One MS follows the requirements of the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be used for such Carriage (known as the ATP Treaty⁷) and also a relevant technical instruction on the maintenance of the cold chain which applies also to online sales.
- In those MS where there are no specific temperature requirements with which operators transporting food directly to the final consumer have to comply with, the CAs consider that FBOs are responsible for the food safety and have to ensure that transport does not lead to food safety problems (Picture 4).

⁷ ATP is a 1970 United Nations treaty that establishes standards for the international transport of perishable food between the states that have ratified the treaty.



Picture 2. Products ready to be dispatched from a main refrigerated warehouse to other locations to be delivered to the final consumers.



Picture 3. Groceries ordered online in refrigerated truck to be delivered to the final consumers.



Picture 4. Delivery of perishable food (meat) bought online for which temperature has to be maintained during transport.

Additionally, some MS have also specific guidance documents that clarify the rules applicable regarding nutrition and health claims to all commercial communications including those relayed through social networks or similar social media. The businesses are thus considered responsible for ensuring that the information provided complies with the legislation.

Similarly, inserts or comments made by another party on a website for which the business is responsible form part of the business's marketing and have to comply with the rules. Even

feedback comments on webpages and social media pages of online shops are usually considered as part of advertising since the owner of the online shop can choose to regulate them.

Conclusions on national legislation and national guidelines

National legislation, where in place, gives additional powers to the CAs to carry out official controls and to request relevant information in the course of investigations from other entities. For certain areas interpretation of existing rules for online trade is ongoing whereas for other aspects for which there is no EU specific legislation, MS have taken different approaches. All CCAs have published relevant information explaining to FBOs operating online their responsibilities and providing advice to consumers when they shop online.

5.2 Competent authorities

5.2.1 Responsibility

In the different MS visited the responsibility for controls of food sold on the Internet lies within the remit of the authorities responsible for general food controls. Certain aspects of Internet sales of food might also require the input of the authorities controlling advertising or from counterparts such as medicines agencies, where products fall into more than one category (e.g. food supplements that are also regarded as medicinal products).

Depending on the existing structure of each CA in the different MS this type of official control has been assigned across different levels within their organisation. In general terms the everyday control activities of such FBOs are carried out by the local CAs. In one MS local CAs are also responsible for identifying businesses selling food online in their area.

In some MS visited there are specialised multidisciplinary teams, well advanced in carrying out Internet investigations (of which food could be a small part) and which provide support to the local and central CAs. These teams, in relation to Internet sales of food, either: a) focus on the investigation of food fraud related cases or serious food incidents whereas less serious cases are handled by the local CAs b) have a broader spectrum of activities covering different commodities including non-food (e.g. cosmetics, tobacco) or c) specialise on areas of particular concern i.e. food supplements. Where such teams are operational they may also carry out proactive controls to identify non-registered FBOs based on their internal procedures and methodology. In general terms, and apart from a few exceptions, no systematic proactive searches are carried out in order to identify non-registered FBOs operating online. Ad hoc surveys may be conducted by the CAs to identify such FBOs.

Different channels of communication exist between the different CAs responsible for food safety and also between the CAs at central and local level. Advertising, where it does not fall under the remit of the food CAs, is controlled by other responsible authorities at national level. In such cases collaboration takes place as and when required.

5.2.2 Scope of controls

In MS visited the approach is not uniform and different criteria are used in order to determine whether or not a specific site addresses consumers in these MS and are therefore subject to their official controls. Common criteria used are: language, currency, whether the responsible legal entity has its registered office in the country, indication of a physical address on the website, country top level domain, absence of a disclaimer that the products bought cannot be delivered to an address in the country, etc.

Some MS highlighted that, in practice, consumers also buy routinely from websites that sell in English. This makes the potential scope of the official controls over food sold on their territory and over the Internet, very wide.

5.2.3 Procedures

CAs in some MS are able to perform online purchases for sampling and analysis when required, provided that they follow certain principles:

- Where it is to be sent for analysis, sufficient product is obtained and where reasonably practicable, the sample is divided into two or three parts, or more than one unit of the same batch is sampled in order that a supplementary second expert opinion can be sought by the owner and another retained as a reference sample in the case that sample is divided in three.
- The FBO is notified that a sample has been taken (either at the time of purchase or after it is received by the CA)
- The existing rules for collecting evidence are followed (e.g. accurate records of when the test purchasing ID has been used and by whom, email address used)

A credit card and a phone number are solely used for these purposes. Not all CAs possess credit cards that can be used for that purpose and therefore both mystery shopping or test purchases in order to acquire a sample for official analysis might not be feasible. For deliveries, an address that does not stand out as a CA property or a specific PO Box is used.

Additionally, there are differences between MS as to whether or not it is allowed to use assumed identities during investigations and online searches. In some MS official staff can use them without limitation, others cannot use them at all, while in some MS official staff is obliged to use their real name (not fully anonymous). However the new official control Regulation (EU) No 2017/625 which becomes applicable by the end of 2019 provides the legal basis for CAs to shop online without revealing the authorities' identity and to use the products received as official samples.

5.2.4 Equipment

Most CCAs are equipped with stand-alone (i.e. not part of a government network) computers that are used for online controls by official staff including for searches in relation to food sold over the Internet. These computers are not used for purposes other than evidence gathering, do not have information stored on them, do not have filters applied to them and have

appropriate software installed to ensure the correct capture of the evidence to ensure it is admissible in legal proceedings. In one MS stand-alone computers are also available at local CA level and in another MS such equipment is readily available only at local CA level (Picture 5).



Picture 5. Typical arrangement of equipment used for online investigations.

5.2.5 Training

Training for controls over Internet sales has been provided to staff dealing with these controls and who work mainly at central level. This includes tailored training on how to search and capture specific evidence in investigations of Internet sales not only through business websites, but also on sales platforms and social media networks.

Officials from all the MS visited have attended the EU-financed Better Training for Safer Food (BTSF) course on control of e-commerce of food. Some officials also receive hands-on training on Internet investigations and open source intelligence from their counterparts in other authorities. Additionally, representatives from some MS also regularly attend the Food Law Enforcement Practitioners' (FLEP) meetings on e-commerce and the meetings of the Commission's working group on official controls of e-commerce of food.

Conclusions on Competent Authorities

The CAs responsible for official controls of food are also responsible for controls over the Internet sales of food. Different arrangements are in place in the MS visited depending on their existing structure and priorities. The expertise, available equipment and procedures followed for online investigations differ between MS. In some cases, legal constraints impact on the scope and depth of the controls that can be performed.

5.3 Registration and approval

The rules applicable for registration or approval of FBOs that sell online are those described in Regulations (EC) Nos 852/2004 and 853/2004 including the related national rules and procedures. The fact that a business sells some or all of its products online has no implications on its registration or approval for the purposes of the above mentioned Regulations. Therefore, FBOs involved in online activities which include handling and/or ownership of food must be registered or approved accordingly. This also includes food transport and delivery services.

In most cases the FBO registration forms do not explicitly take into consideration the online dimension, nor is that information considered for the risk rating and for determining the type or the frequency of controls by local CAs. Where the sale of food via the Internet is part of an existing business then this activity is not registered separately but is considered as part of the existing registration.

In some cases registration forms contain a series of questions on the type of the activity, the type of processing involved, the type of products sold as well as whether or not there are online sales. Another approach used is to ask and collect information on Internet sales activity during the on-spot inspections in the different establishments.

The CAs consider it difficult to develop and maintain an up-to-date list of online food sellers due to the volatility of such online businesses and the simplicity with which such businesses can establish, re-establish themselves or exit the online market. It is relatively easy to start an online food business, without necessarily being aware of all the rules that apply and the responsibilities of the operator. FBOs are required to inform the relevant CAs of any significant changes to, or termination of their activities. CAs mentioned that this is not always followed by FBOs in relation to their online activity.

Online platforms that act solely as third party service providers are not considered FBOs operating online, since they never own or/and physically handle the product. These are considered as information society service providers under the EU's Directive 2000/31/EC - hereafter the "EU e-Commerce Directive". These service providers are not obliged to take action until they are informed of any non-compliant offers made available by third parties via their platforms.

In some of the MS visited parcel delivery services including postal services are not registered since the parcel delivery operators do not usually offer to transport goods requiring chilling or perishable goods and are therefore not classified by the CAs as FBOs. Some MS are reflecting on whether certain operators of food delivery services to the final consumers should be considered FBOs (with an added level of complexity arising when such deliverers are deemed to be self-employed).

One MS is reviewing the content of its existing rules concerning the need to register FBOs involved in online sales which operate from their private residence and how to ensure that they are subject to official controls.

Two MS visited were in the process of reviewing the registration procedure followed by FBOs handling food of non-animal origin and those involved in broker activities for which there are no requirements to be registered with the food CA and for which until now registration for tax purposes was considered sufficient. The task falls onto the CAs to identify the FBOs for which they are responsible and those engaged in online trading activity as well as subjecting them to official control. This poses difficulties as the business entities might not mention, at the time of registration, that they sell food, where that is not their main activity, or the fact that they sell online (online sales might start at a later stage).

Conclusions on registration/approval

The system for registration of establishments does not favour the correct identification of all FBOs operating online, which in turn impacts on the ability of the CAs to organise official controls. It is challenging for CAs to identify and keep track of the activities of such operators and consequently subject them to official controls because of the volatile nature of the online sales business.

5.4 Official controls

The approach taken by the CAs is that FBOs selling exclusively or partially online should be ideally subject to the same types of controls in terms of scope and frequency as high street retailers. Official controls conducted in the area of Internet sales of food in most of the MS visited have been limited to date. The reasons highlighted by the CAs for this are, the lack of resources combined with the fact this is a relatively new area necessitating control for which existing control tools require adaptation and the scarcity of specific and tailored training.

Official controls cover aspects such as food hygiene (temperature requirements, transport and traceability) labelling, health and nutritional claims. The maintenance of the cold chain during transportation is considered the responsibility of the transporter or online seller (including validation of the cold chain during transport of perishable food) and this is included in the food safety management system followed by the FBO responsible for the transport (*Pictures 6 and 7*).

The online controls are in most cases carried out in conjunction with physical controls. CAs, before carrying out an inspection in the premises of an FBO operating online, may also review (randomly) the website of the business to gain an understanding of the nature of the business, the size and scale of operations, and any compliance issues e.g. labelling, claims. The reports of these website controls may also be recorded in the information system where the official control reports are lodged.

If the operators sell exclusively on the Internet and have no physical food related activities (also known as drop-shipping FBOs), then controls are carried out exclusively/largely on their websites.



Picture 6. Food ordered online packed in insulated boxes ready to be dispatched.



Picture 7. Insulated box and cooling materials used for dispatching chilled food.

Open social media profiles may be included in the inspections as the profile is accessible to all users of the social media. As regards closed social media profiles, due to limited accessibility, the CAs become aware of illegal activities in such groups when a complaint is made by one of the group's members.

In some MS sectoral or branch-specific investigations/campaigns and follow-ups of complaints and alerts or surveys on targeted themes cover also FBOs selling products online. Some foods, in particular food supplements, are more intensely targeted, due to the importance attributed to their online sale and distribution. Such surveys, covering food supplement sale sites, have recorded high numbers of non-compliances.

Currently there are no specific procedures, aside from some exceptions, in place in the MS to identify establishments which do not declare themselves or which make incorrect declarations. No systematic proactive search is made online to identify unregistered FBOs. The non-registered FBOs may become known to the CAs through advertising (if applicable), through the information provided at registration with the tax authorities (if they mention the food dimension), through their involvement in different cases that are subject to CAs' surveys or investigations and through customer complaints.

In two MS the CAs are provided with automatically generated data on businesses selling food products on the Internet, if that information is indicated in their website. The data are automatically generated by the crawler used for tax purposes. The names of the food businesses identified are then forwarded to the respective authorities who check whether these operators are properly registered or approved.

"Mystery shopping", where purchases are made without the purchaser identifying himself beforehand as an official inspector has been recognised by MS as a useful investigation tool.

Mystery shopping can be used by CAs as part of their investigations to generate a record of payment and delivery linked to the online purchase, in order to identify the actual online seller. However, at the time of the mission series most MS did not have the legal basis to purchase without identifying themselves.

Additionally, in some MS online purchases are carried out for official sampling and analysis when required. Some MS pointed out that this practice may raise some difficulties, particularly in relation to the representativeness of the samples. Where sampling of food sold online cannot be carried out by the CAs, such samples are taken from physical premises of online retailers (*Picture 8*).



Picture 8. Sealed samples obtained at the physical location after visiting an online site selling food supplements.

In all MS visited, official staff carrying out controls and investigations of food sold on the Internet has to follow specific protocols or guidelines for gathering online evidence (e.g. capture a screenshot of a website). This is to ensure that the evidence is collected in accordance with national legislation thus guaranteeing their legal admissibility.

In relation to parcels of food ordered over the Internet from non-EU countries, those normally arrive in EU via flight carriers without a manifest and consequently may not be subject to screening by the customs authorities. Only where there is a suspicion of non-compliance is a parcel content declaration read and the parcel subject to scanning and/or opening, with referral to food authorities where relevant. Postal sorting centres in general do not have a food authority presence or other means by which they can detect food (e.g. scanner or a sniffer dog). The CAs acknowledged that it is possible that parcels containing food originating from non-EU countries (including non-EU countries that are not allowed to export

such food to the EU) might not be detected by the CAs, especially when the sender declaration is intentionally misleading (*Picture 9*).



Picture 9. Parcel containing both food of animal and non-animal origin coming from non-EU countries after being ordered online.

In some cases, there is no storage/premises on the national territory, food being sold from a foreign website and dispatched directly to the final consumer in a MS. In those cases, the CAs may under EU food law, seek assistance from the host MS or opt to contact the authorities in the host country as they are competent to take action in case of products which are non-compliant with EU or national legislation.

In one MS visited it was explained that if the owner is resident outside that MS and it has no physical food-related activities in the country, the official inspector is required to schedule the inspection of the website and carry it out via computer video chat or voice call (e.g. by calling at the agreed time, showing his/her identification, informing the operator about the purpose of the inspection).

5.4.1 Action in case of non-compliance (including use of Rapid Alert System for Food and Feed (RASFF) and Administrative Assistance Cooperation (AAC) system)

The enforcement tools available for traditional official controls apply also to Internet sales of food. Depending on the risk identified, the enforcement measures taken by the CAs in relation to food sold online have included requirements for removing claims, revising product labelling, removing product from the market, recalling product from consumers, and seizing of products.

In case of a non-compliance, the local CAs are responsible for ensuring that corrective actions are taken by the FBO concerned. Generally, this includes initial advice to the FBO operating online on how to rectify the situation. The local CA can also intervene and set deadlines for corrective actions and follow-up, based at their own discretion. Additionally the local CA can also take other enforcement measures against FBOs operating online such as issuing formal notices/warnings, and prosecution.

In cases where the FBO operating online remains non-compliant, a CA can notify the webhost or sales platform and ask them to remove or to disable access to the information. This is accomplished after the CA has demonstrated that the information on a specific site/platform is in breach of the law and therefore also in breach of the contractual terms with the webhost/platform. Once the webhosts/platforms have actual knowledge of the illegal activity they are obliged to act expeditiously to remove or to disable public access to the specific site based, on the EU e-Commerce Directive.

The option for enforcement abroad (fines on operators based in other MS or in non-EU countries) has not been used to-date by any of the CAs in the MS visited regarding food. In the case of recalls from consumers FBOs have the responsibility to inform the consumers. In some cases, also the CAs inform consumers regarding a product recall and how to deal with the unsafe product. CAs also provide information to consumers about dangerous products which might also be available for online purchase.

The procedures and principles for the handling of the RASFF notifications are the same regardless of whether it concerns Internet sales or not. The CAs in the majority of MS visited stated that they also screen RASFF notifications, even if the seller is domiciled abroad and there is no requirement for action/follow up concerning their country. This is so they can identify any risks for their consumers who may be buying products online that are linked to the (non-domestic) RASFF notification. The CAs in one MS pointed out that this screening is done in relation to food supplements and "enriched foods" (products intended for sports people, weight-loss aids) but another MS CA indicated that this is not done due to lack of resources.

The CCAs in the MS visited use the EU's AAC system which is a dedicated IT tool launched by the Commission in November 2015 for the handling of cases that require administrative assistance to be deployed. Some MS highlighted the fact that there are no rules laid down in AAC system establishing the time frame during which MS should respond or provide assistance, which makes using the AAC system cumbersome.

Not all CAs can easily request information from non-FBOs (e.g. banks, payment service providers-PSPs) to pursue online investigations. In certain cases, they must have a warrant. In order to obtain a warrant, they need to make a request to the police, but for that to be successful they also need to demonstrate the importance of the case.

5.4.2 Cooperation

Operational cooperation between food authorities and other relevant CAs (e.g. consumer protection authorities, tax authorities, medicine agencies, police authorities, customs, social security and justice services) is in place but varies depending on the MS. Examples of routine cooperation with the tax and police authorities as well as the medicine agencies were noted in the different MS visited.

Some MS are investigating the possibility of a data sharing agreement with the tax and customs authorities for sharing details of non-registered FBOs which they may come across through their online searches for non-registered businesses. Examples of ad-hoc cooperation between CAs of some MS and banks, PSP and sales platforms in the course of the investigations were also noted in some of the MS visited.

The CA of one MS keeps an up-to-date file of contact details of the main active providers with whom they cooperate during their investigations. In two other MS the CAs have either data sharing agreements in place with online advertisers and online selling platforms, or work in close cooperation with Internet Service Providers (ISPs) and PSPs as well with local domain services and providers respectively. However the majority of MS has not yet entered into types of formal cooperation with sales or advertising platforms, domain registrars, ISPs, PSPs, banks.

Some CAs have through the years developed and maintained fruitful cooperation with other MS. The cooperation has been established by networking /sharing experiences and carrying out exchange visits and training courses. This cooperation extends also within the FLEP working group on e-commerce which is an informal group of food control practitioners from across the EU active in this specific area.

One MS has also developed good cooperation with other international authorities that are also involved in similar types of official controls. Some MS follow up on initiatives seen elsewhere in the EU to establish formal contact arrangements and data sharing with different service providers.

International cooperation was highlighted in several instances as an issue along with the lack of cooperation from some MS to bilateral requests for assistance. Although there are certain options available and good cooperation between MS when it comes to non-EU countries there are constraints and limitations as to what can be done. The CAs highlighted that cooperation with non-EU countries was even more difficult in cases of non-compliance.

Conclusions on official controls

Controls of Internet sales of food are being integrated in the official control system although the tools for carrying out controls require adaptation to this particular sale option and for the time being are limited. Proactive searches to identify unregistered FBOs are up to date very limited and some MS do not have the legal basis to carry certain activities or to use tools necessary to control this type of sales, such as mystery shopping. The enforcement of EU food chain legislation on online sales is cumbersome especially concerning entities based in non-EU countries with which there is no established cooperation.

6 MATTERS FOR CONSIDERATION BY MEMBER STATES

CAs are striving to ensure that their controls are kept up-to-date with the digital economy and to develop response mechanisms that are effective and ensure level playing field for the FBOs involved in this type of trade. MS highlighted some common challenges and good practises that they have developed in this area, which are further explained below.

MS agree that a main challenge remains how to proactively identify non-registered FBOs operating online and raise their awareness on applicable requirements. CAs met consider that intervention (mostly through advice) can be effective. Therefore, MS have launched campaigns in order to **raise awareness** and inform FBOs who operate online that they must be registered. In one instance, the information to online FBOs with regard to their statutory responsibilities for the sale of food has been incorporated into some of the major online platforms' interfaces, placed on the national authority's webpage and made available to trust mark providers.

In one MS the CAs are involved in a project for the development of an **automated IT based software** prototype for the monitoring of the online food market. The project is expected to be finalised in 2018. The main objective of the project is to develop software which optimises search engine results, integrates text, logo and image recognition procedures and performs risk oriented controls on food marketed online. The software should allow the user to introduce certain key words and run queries. The software will return a list of relevant results excluding, as far as possible, any false positive "hits". The software will also be able to collect evidence automatically (screen prints) and compare the results of the queries with the data available in other official databases.

It is relatively easy to set up a website from which to sell food. FBOs subject to registration can quickly begin business without being fully aware of their responsibilities as FBOs. It is also challenging for CAs to **identify and keep track of the activities** of such operators. It is even more difficult to identify rogue sellers. FBOs who would like to circumvent official controls can easily do so by changing the content of their webpage or re-registering in a marketplace using a different name.

The **anonymity** brought by the social media where, so far, food sellers are not required to provide accurate information about their identity and the closed social media groups to which

the CAs have no access or limited accessibility have been identified as particularly challenging issues. CAs are facing new challenges related to Internet sales of potentially dangerous substances marketed online as food supplements.

The CAs met highlighted that, although there are options available and some formalised and informal avenues of **cooperation between MS**, when it comes to non-EU countries there are constraints and limitations as to what can be achieved. The process for dealing with rogue traders hosted outside the EU is cumbersome and often ineffective both in identifying and in blocking a website since the entity behind the trade can easily create another site offering the same product using a different server. The lack of international cooperation was highlighted as an issue, including at EU level, especially, but not exclusively for areas where legislation is not harmonized.

Some MS CAs have developed good **cooperation with certain online platforms, social media networks and private entities** providing support to businesses which are interested in marketing their products online e.g. private companies that offer expertise in creation, management and distribution of product information and website designers. Other private players may be used in order to assist in this effort by ensuring that the information placed online complies with the relevant legislation. Examples of advice to online advertising platforms on the rules that have to be complied with for the sale of food were also noted.

Directive 2002/46/EC on **food supplements** does not set requirements for all relevant substances, therefore MS can follow a **different approach**. Enforcing provisions of national legislation when food supplements are sold from a website or platform registered in another MS is not always feasible where the respective MS takes a different approach. Although this is not a pure e-commerce problem it is especially relevant for the sale of such products between the different MS.

In certain cases, the remit of some authorities is unclear when it comes to **differentiating between food supplements and medicines** for which the online market is already quite developed. At the same time there are differences between MS in the classification of products as being either medicines or food supplements since there are no specific EU requirements and each MS is allowed to decide how to classify these products within their territory. There are instances where some products are authorized as medicinal products in one MS and as food supplements in another.

Establishing good cooperation and **exchange of information and intelligence sharing** with other relevant authorities such as tax authorities and medicine agencies has proven successful in some MS, since according to them this provides useful inputs and assists in areas related to Internet sales of food. Such assistance could take the form of information exchange regarding the evolution of the Internet sales of food (e.g. food domains registered, entities that are difficult to identify etc.) or in relation to products that are hard to categorise. Sharing success stories with some of those authorities which are also active on online controls can be beneficial for food authorities.

Currently some MS have **legal constraints to carry out online purchases** in order either to obtain samples for official testing or to identify sellers using the money transaction records in the course of ongoing investigations. Some MS cannot do that due to the lack of dedicated credit cards used for this purpose. In some MS specific difficulties arise in relation to the use of assumed identities during complex investigations. For example, national legislation may prohibit the use of assumed identities or determine the degree to which purchases can be made anonymously. In certain cases, the CAs do not have the necessary tools including sufficient legal basis and procedures to act in a timely and effective manner.

Difficulties have been highlighted in using online purchase **for complex sampling protocols** such as for aflatoxin (e.g. difficulties with ensuring the representativity of the batch and also with the definition/notion of what constitutes a batch in Internet sales). In some cases, the CAs are not able to take samples of food products identified during online investigations on the spot since these are no longer available by the time of their visit to the premises.

The food authorities in the majority of the MS visited have **limited legal powers** related to non-food legislation. Problems related to Internet sales of food such as non-compliant **e-advertising and unfair commercial practices** have to be referred to other authorities or to the police. Sites which are not selling products but only advertise products by making unsubstantiated or illegal claims cannot be shut down unless a direct link between it and a website selling the product is established by the CA. It is also difficult to take enforcement action if an FBO provides a link to another entity where claims are made about a type of product similar or identical to that being sold.

For complex cases especially, but not exclusively, with an international dimension, **understanding** how the **monetary transactions, advertising and logistics** are organised for Internet sales and cooperation between companies that are not FBOs, but offer services across industry sectors (e.g. ISPs, PSPs, banks, online platforms, etc.), is fundamental for ensuring that the entity behind an Internet sale is identified and enforcement action can be taken. Some MS have already used this approach whereas others are still encountering difficulties. A legal base at EU level requesting cooperation of ISPs, PSPs and banks with authorities would be beneficial according to the MS.

The existence of a dedicated and multidisciplinary **investigation unit** with various qualifications and skills such as investigation, law, information technology, accounting, food science and medicine is both effective and efficient. Better results can be achieved if the teams are equipped with the right IT tools used for searches/data mining and capturing digital evidence and if they have the possibility to perform online official sampling/test purchases using assumed identities.

In some MS the potential scope of the official controls over food sold on the Internet can be very wide as any food sold on the Internet through English websites and in Euro can be considered as addressing the EU consumer (if delivery to EU countries can be requested on the website). This places a burden on the CAs who strive to **prioritise their controls with**

the existing resources while at the same time trying to provide a fair playing field for food businesses.

Additionally, the **difficulty to access storage facilities**, especially those situated in private dwellings or associated outbuildings/garages is a limiting factor. This is particularly the case for the sale of food supplements and sports nutrition since selling food supplements via the Internet is easy and very popular. In such instances, other than in cases of suspected criminality, any official inspection has generally to be announced in advance as the FBOs involved do not have fixed business hours, in some cases it is even required to explain the purpose of the visit in advance.

It is also relatively easy to have an online business delivering internationally. **Checking all parcels**, including those declared worth less than a fixed amount and which are exempt from taxes, arriving from non-EU countries in order to verify that the contents of the consignments are in line with the EU requirements is both unrealistic and impractical. This is due to the huge volume of parcels arriving and the lack of a special mechanism to identify whether their content complies with the existing rules especially when the sender declaration is intentionally misleading.

7 ACTIONS TAKEN OR PLANNED BY THE COMMISSION SERVICES

The Commission has proposed a number of measures to improve the enforcement of EU agri-food legislation on Internet sales of food products and to explore potential improvements of the current control regime. This should allow consumers to buy food online at a higher level of safety and boost consumer's confidence in e-commerce.

To enhance cooperation between CAs and to increase effectiveness and efficiency of controls the Commission organised in 2017 the first EU coordinated control plan on food offered via the Internet. The objective was to encourage MS to identify and then control in a coordinated manner websites which offered for sale specific types of products, i.e. food supplements with medicinal claims and certain novel foods which are not authorised in the EU. The coordinated control plan was very well received by the MS. On a voluntary basis, the authorities of 25 EU MS plus Switzerland and Norway participated. The authorities checked nearly 1,100 websites and found around 740 non-compliant offers, i.e. 425 offers of unauthorised novel foods and 315 of food supplements with medicinal claims⁸. A second coordinated control plan is in the planning phase.

DG Health and Food Safety has also prepared and regularly updates a guidance document on e-commerce control of food. The guidance document contains information about the methods and tools available for this type of control (including adjustment of RASFF and AAC formats to the needs of e-commerce control) and also the contact details and agreed protocols with online platforms, social media networks and PSPs with whom the CAs can communicate with if needed. Some MS have already used the guidance document in several instances whereas the rest are encouraged to do so in the future.

⁸ https://ec.europa.eu/food/safety/official_controls/legislation/ccp/online-offered-food-2017_en

DG Justice and Consumers (DG JUST) has also developed a guidance document aiming to aid MS CAs during their controls related to the safety of non-food products sold online. This could be useful for developing a similar one for food offered for sale via the Internet. In addition DG JUST has developed an e-learning course on e-commerce control of consumer products called "E-enforcement Academy of the Consumer Protection Cooperation network" which is also available to food control authorities upon request.

The EU Commission as a body is also working towards establishing administrative assistance and cooperation agreements with its main trading partners. The Commission, aside from participating regularly in the FLEP meetings is also establishing a MS expert working group on official controls of e-commerce of food during which MS' representatives have the opportunity to discuss and exchange views on relevant topics and to make suggestions for developing harmonised actions. The Commission provides training for MS staff of food control authorities on online investigations via its BTSF programme.

A key achievement of the current series of missions is that it provided an opportunity to bring the people involved in these types of controls together and share experiences. Already some of the MS visited, have on their own initiative, carried out exchange visits for their staff involved in this area and are already cooperating successfully with each other.

ANNEX 1 – LEGAL REFERENCES

Legal Reference	Official Journal	Title
Dir. 2000/31/EC	OJ L 178, 17.7.2000, p. 1–16	Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market
Dir. 2002/46/EC	OJ L 183, 12.7.2002, p. 51-57	Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements
Reg. 178/2002	OJ L 31, 1.2.2002, p. 1-24	Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 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
Reg. 852/2004	OJ L 139, 30.4.2004, p. 1, Corrected and re-published in OJ L 226, 25.6.2004, p. 3	Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs
Reg. 853/2004	OJ L 139, 30.4.2004, p. 55, Corrected and re-published in OJ L 226, 25.6.2004, p. 22	Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin
Reg. 882/2004	OJ L 165, 30.4.2004, p. 1, Corrected and re-published in OJ L 191, 28.5.2004, p. 1	Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules

Reg. 2017/625	OJ L 95, 7.4.2017, p. 1–142	Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 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)Text with EEA relevance.
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