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DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Crisis management in food, animals and plants
Official controls and eradication of diseases in animals

The first EU coordinated control plan on online offered food products

Analysis of the main outcome of the implementation of the Commission Recommendation on a coordinated control plan on the official control of certain foods marketed through the Internet¹

1. Introduction and objectives

Internet offers and sales of food are on the increase. The Internet and digital technologies pose specific challenges to competent authorities confined to their jurisdictions. To address these challenges and to protect consumers in the Union from unsafe food or misleading practices, official controls on Internet offers and sales need to be strengthened. Competent authorities need to increase cooperation in order to ensure the proper application and enforcement of the relevant EU rules for foods marketed via the Internet which are very often traded cross-border. This can be fostered through coordinated control plans establishing the prevalence of certain hazards in food or misleading food information linked to Internet offers and sales.

During the month of September 2017 the first EU coordinated control plan on online offered food products was implemented according to a protocol adopted as *Commission Recommendation on a coordinated control plan on the official control of certain foods marketed through the Internet (C(2017) 4986 final, 24.7.2017)*¹.

The objectives of the plan were to encourage Member States' and EFTA States' authorities to get more engaged in the control of the eCommerce food market, to cooperate more closely on cross-border offers of products which are non-compliant with national or EU food legislation and to use, for this cooperation, the electronic systems which are already in daily use for the control of conventionally traded food, namely the EU Rapid Alert System for Food and Feed (RASFF) for notifications of products which raise health concerns and the EU Administrative Assistance and Cooperation System

¹ https://ec.europa.eu/food/safety/official_controls/legislation/ccp/online-offered-food-2017_en

(AAC) for notifications of non-compliances which are not health related but mainly misleading consumers.

On a voluntary basis the Member States' food control authorities were asked to search the Internet for websites which offer in their respective official language(s) certain food products for sale to the consumers in their country. The food products in question were the following **four novel foods** which are not authorised in the EU²,

- **Agmatine (4-aminobutyl) guanidine sulfate**³
- **Acacia rigidula**
- **Epimedium grandiflorum and**
- **Hoodia gordonii**⁴.

In addition, authorities were asked to search for websites which offer food supplements with misleading statements contrary to the rules on fair information practices laid down in Article 7 of Regulation (EU) 1169/2011⁵, and more specifically, to search for offers of **food supplements** with information that attributes to them the property of **preventing, treating or curing bone and joint diseases or refer to such properties with disease-related expressions, pictures or symbols.**

Thus, the control plan focussed on food products which are clearly in breach with the existing EU food legislation and which should therefore not be offered for sale to consumers in the EU either offline or online.

Since it was to be expected that a high number of non-compliant online offers would be found and in order to avoid an overload of the official food control capacities, the total maximum number of offers which could be notified by all Member States within this plan was set at about 750 notifications.

² To ensure a high level of protection of human health and consumer's interests Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients (OJ L 43, 14.2.1997, p. 1) provides that novel foods and novel food ingredients are authorised on the basis of a scientific risk assessment performed by the Member States or the European Food Safety Authority before they can be placed legally on the EU market. Since 1 January 2018 the said Regulation is repealed and replaced by Regulation (EU) 2015/2283 (OJ L 327, 11.12.2015, p. 1).

³ It typically appears as 'agmatine sulphate' or 'agmatine sulfate' on labels.

⁴ Hoodia gordonii is also protected under the CITES Convention and the corresponding Council Regulation (EC) No 338/97. Hoodia is listed in CITES Appendix II, which means that international trade is possible upon presentation of an export permit by the exporting country. In addition, in order to be imported into the Union, an import permit needs to be delivered by the importing Member State. Hoodia (various species of hoodia are listed in CITES) is one of the most commonly seized commodities for infringement to the CITES/EU wildlife trade rules, mostly as part of food or health supplements. http://ec.europa.eu/environment/cites/pdf/2015_overview_important_seizures_in_EU.pdf

⁵ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18).

Participating authorities were requested to search for the above-mentioned products between 4th and 29th September 2017 and to report their results to the Commission until 10th November 2017.

2. Results

Nearly all Member States, namely 25 plus Switzerland and Norway, participated in this EU coordinated control plan on online offered food products. The authorities checked nearly 1100 websites and found 428 offers of unauthorised novel foods and 351 food supplements with medicinal claims which add to 779 offers for sale of products which were clearly non-compliant with EU legislation (see Annex and Table 1).

The control authorities focussed their controls mainly on their nationally located traders (482 offers) but found also offers in their respective official language(s) from traders located in other EU Member States (142 offers) or third countries (110 offers), in particular US and China. Although it was not requested by the protocol, authorities reported about 440 cases in which measures were taken with the aim of closing the respective offer, including inspection of the traders' premises, warnings and fines in some cases.

Table 1. Summary of the results

Websites checked	1077
Non-compliant products	
- novel foods	428
- food supplements	351
- total	779
Traders of non-compliant products location	
- notifying Member State	482
- other than the notifying Member State	142
- third country	110
Notifications of non-compliant products	
- via RASFF	139
- via AAC	154
- handled nationally (via Annex II ⁶)	450
- without health concern from third countries (via Annex III ⁷)	36

⁶ Non-compliant offers by traders situated in the notifying Member State/EFTA

⁷ Non-compliant offers without health concern by traders situated in third countries

About 140 novel food cases were notified via the RASFF to authorities in other Member States and third countries in which the traders were located, which indicates that there were health concerns associated with these products. More than 150 cases were notified via the AAC System between Member States. The majority of the cases were handled within the respective Member State (450 offers of local traders) or were offers without health concern by traders situated in third countries (36 offers).

3. Analysis of the results

The voluntary participation of nearly all Member States plus Switzerland and Norway in this first EU eCommerce food control plan clearly shows the high interest in this new task for control authorities. Likewise, the high number of notifications of non-compliant novel food products or food supplements bearing non-compliant claims (which even exceeded the maximum number introduced to avoid overloading the food control systems) underlines the interest and the capabilities of Member States' control authorities. This is of particular relevance as Internet investigations request special hard- and software, besides a high expertise of the staff, to enable official controls without being identified as control authority. Since 2014, such capabilities are trained in the EU 'Better Training for Safer Food' eCommerce control courses to Member States' control staff which may have contributed to the success of the present plan. The legal basis for anonymous online controls is provided by the new Official Control Regulation (EU) 2017/625⁸.

The control authorities focussed their activities on traders located in their country (around 65%), which is an appropriate approach as only traders in the authorities' jurisdiction can be physically inspected, registered and put under the risk-based official control schemes as any other stationary food retail business. In the long run, this approach should be successful in establishing a similar level of food safety in EU-based online food businesses as EU consumers experience today in stationary retail. However, Internet trade is often cross-border and consequently non-compliant websites of traders located in other Member States (around 20%) and third countries (around 15%) have been found during the Internet investigations. At this point, the administrative assistance and cooperation between competent food control authorities become crucial since only with the help of the authority of the respective country can a non-compliant offer be closed or the misleading information being corrected and the respective traders put under official control. Within the EU, cooperation is well established and the AAC and the RASFF systems are used for rapid information exchange and mutual support. For exchange with third countries, the RASFF can be used in case of non-compliant products which raise health concerns. In the present plan, US and China based traders were found to offer such products to EU consumers. Experience shows however that the response of third countries in case of food supplements and novel foods which are non-compliant with EU legislation is poor and that cooperation and mutual support need to be improved

⁸ 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) (OJ L 95, 7.4.2017, p. 1).

especially on eCommerce cases. The Commission will discuss this issue with the respective US and Chinese authorities with the aim to improve cooperation and provide mutual support.

The high percentage of non-compliant offers on the visited websites (779 offers on about 1100 visited websites) was to be expected for novel foods as Internet investigators search for the names of the novel foods together with some additional search terms which identify commercial offers. However, it is surprising that also the search for food supplements with medicinal claims was similarly successful. It indicates not only that the search strategies which were part of the protocol were effective but also that the probability to find online offered food supplements which are non-compliant with EU food legislation is very high.

Member States also reported specific challenges related to the enforcement of food law in eCommerce. For example, missing or wrong addresses indicated on websites can make follow-up investigations and on-site inspections difficult. Many online traders are only brokers who have no product available for official sampling and analysis. Concealed identities - intentional or not - and complex supply chains are characteristics often found in eCommerce. Enforcement of food law in online trade therefore requires special investigative methods and know-how.

4. Conclusions

The impressive number of websites found offering non-compliant products shows that the EU food control authorities are prepared to respond to the challenges of the online world in an appropriate manner, but also that a further increase in control capacities and training of additional staff in Internet investigations are required, in particular as more and more food is sold online.

The high percentage of non-compliant offers is a clear sign that the eCommerce control today needs to be strengthened. In this respect, the Commission has taken a number of actions in order to support Member States' competent authorities in this new task of eCommerce control, such as

- training of staff in online investigations,
- establishing contact points for cooperation with major trading e-platforms and market places including social media,
- seeking cooperation with payment service providers and
- adjusting legislation and electronic reporting systems to the needs of official eCommerce control.

However, further efforts are necessary, in particular to remind the main players of eCommerce such as platforms, payment services and the traders themselves of their responsibilities, to ask for their contributions to increase the safety of online offered foods and to reduce offers which mislead consumers⁹.

It can be concluded that the objectives of the plan have been reached:

- the Member States' authorities were very motivated to engage in this new task;

⁹ <https://ec.europa.eu/digital-single-market/en/news/communication-tackling-illegal-content-online-towards-enhanced-responsibility-online-platforms>

- they cooperated and informed each other about cross-border traded non-compliant products and
- for this information exchange, they used the electronic systems RASFF and AAC.

A second and more ambitious coordinated control plan on eCommerce control should be considered to further step-up and train the investigative capabilities of authorities and to enhance cooperation and administrative assistance.

Annexes

- Numbers of websites visited
- Summary of notifications