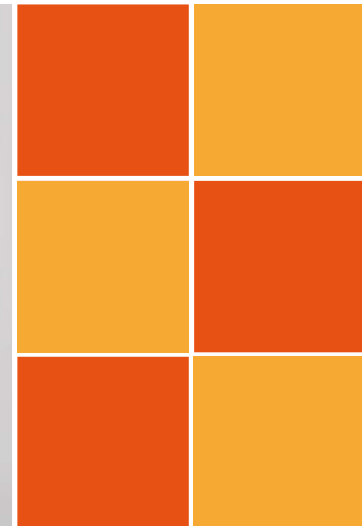




European
Commission



DG Health and
Food Safety

OVERVIEW REPORT **Fighting fraudulent practices in the agri-food chain**

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EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Health and food audits and analysis

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OVERVIEW REPORT

**SERIES OF FACT-FINDING STUDIES TO EVALUATE THE SUITABILITY AND
EFFECTIVE IMPLEMENTATION OF NATIONAL ARRANGEMENTS TO FIGHT
FRAUD ALONG THE AGRI-FOOD CHAIN IN ACCORDANCE WITH REGULATION
(EU) 2017/625**

Executive Summary

This report presents the outcome of a project of the European Commission's Directorate-General for Health and Food Safety (DG SANTE) conducted between 2020 and 2022 to collect information on the suitability and effective implementation of national arrangements to fight fraud along the agri-food chain in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council (hereafter: 'the Regulation').

Article 9(2) of the Regulation requires Member States to organise risk-based controls to identify and combat fraudulent and deceptive practices along the agri-food chain (across all control areas listed in Article 1(2)). It is no longer sufficient to carry out traditional official controls that only verify compliance with agri-food chain rules to ensure food and feed safety, animal health and welfare, etc. Member States must also look to potential for fraud in these control areas that may or may not impact on safety but would certainly deceive the consumer and undermine confidence in official control systems.

The provisions of Article 9(2) of the Regulation were not contained in the previous act on official controls (Regulation (EC) No 882/2004). For this reason, the Commission initiated a project to support Member States in reflecting upon what the requirement entails and how to effectively implement it. This involved fact-finding studies of six Member States to identify examples of good practice and to discuss the specific challenges already faced by Member States in implementing EU rules to fight fraud. Information from pilot studies of two Member States as well as information obtained during exchanges with other Member States' authorities were also taken into consideration for this overview report.

This project enabled the Commission services to get a picture of the implementation of risk-based controls for detecting potential fraud and the challenges it presents, and to prepare a guidance document to support Member State efforts to implement the provisions of Article 9(2) of the Regulation. The guidance document has been published in the form of a technical report entitled "Fighting fraudulent and deceptive practices in the agri-food chain" on the following website:

https://publications.jrc.ec.europa.eu/repository/bitstream/JRC131525/JRC131525_01.pdf

The project concluded that Member States' authorities still face several challenges when preparing and implementing Article 9(2) control arrangements, in particular as:

- there is no clear definition of the term "fraudulent and deceptive practices" in the agri-food chain at EU level and in most cases also not at national level either;*
- the planning of risk-based Article 9(2) controls is complex;*
- fraud related control methods are in some cases resource intensive or still need to be developed;*
- there is a need for intensified cooperation across enforcement authorities and control areas.*

All Member States subject to pilot and fact-finding studies carried out some controls to identify fraudulent and deceptive practices in the agri-food chain. In general, where controls existed, these were more advanced in the food and food safety control area than in other controls areas referred

to in Article 1(2). None of the Member States had, at the time of the project, implemented the provisions of Article 9(2) across all control areas.

The controls already in place clearly demonstrate that a risk-based approach for detecting fraudulent and deceptive practices can be successfully implemented. The project also concludes that risk-based planned Article 9(2) controls and targeted investigations based on intelligence (“intelligence-based approach”) are both suitable instruments to fight fraudulent and deceptive practices that complement each other. While some Member States focus more on the intelligence-based approach, other Member States prioritise Article 9(2) controls.

Although the activities of the European Union Agency for Law Enforcement Cooperation (Europol) and EU coordinated actions and programmes do not constitute Article 9(2) controls (as not carried out regularly with a set frequency), such control campaigns help Member States to gain experience in the fight against fraudulent and deceptive practices.

Article 9(2) controls require a planned targeted approach that is facilitated by the availability of suitable data, effective data analysis tools and the availability of control methods that are accepted by the courts. Control data, including past records of operators and information collected during control campaigns as well as information shared through the mechanisms of administrative assistance provided for in Articles 102 to 108 of the Regulation are data sources for the planning of Article 9(2) controls which should be complemented by media screening and horizon scanning for the identification of emerging risks.

Training of all control staff is needed to raise awareness of fraudulent practices, assist staff in performing their role in detecting fraud and ensure that control staff know what steps need to be taken when a suspicion of fraud arises. In addition, inspectors entrusted with Article 9(2) controls may require specific training to ensure that the controls are performed effectively.

In most cases the fight against fraudulent and deceptive practices requires close cooperation between different enforcement authorities including the competent authorities and other law enforcement authorities (police, customs, tax authorities, prosecution services) to exchange intelligence and experience and to coordinate actions. Having access to specialised food fraud investigation teams of the competent authorities or the police as well as prosecutors dedicated to agri-food fraud related cases is an advantage that can help make the fight against fraudulent and deceptive practices in the agri-food chain more effective.

All Member States make use of the EU alert and cooperation network (ACN), which allows authorities to share information or request support from the authorities in another Member State through a dedicated IT tool (iRASFF); however, in some cases there were significant delays with replies to other Member States and in other cases the use of alternative communication channels meant the outcome of investigations was not recorded in iRASFF leading to a reduced effectiveness of the network.

Feedback from the national courts and the prosecutors on the outcome of the cases is of high importance in order to allow the enforcement authorities to improve and target their controls and

investigations to secure convictions.

All Member States facilitate the reporting of non-compliance (e.g. complaints made by citizens or businesses) and follow-up whistleblower information including anonymous tip-offs, at least when sufficient information is being provided to warrant investigations.

In most Member States penalties and sanctions are at the discretion of the courts within the framework of the national legislation. This does not always ensure that the economic gain obtained by the operator through the fraudulent and deceptive practices is sufficiently taken into consideration when imposing penalties. Only two Member States included in the pilot and fact-finding study, Germany and Sweden, have measures in place in accordance with Article 139(2) of the Regulation to ensure financial penalties are sufficiently deterrent.

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ABBREVIATIONS AND DEFINITIONS USED IN THIS REPORT

Abbreviation	Explanation
ACN	Alert and Cooperation Network
DG SANTE	Directorate-General for Health and Food Safety of the European Commission
iRASFF	Electronic system implementing the Rapid Alert System for Food and Feed and ACN procedures described in Article 50 of Regulation (EC) No 178/2002 of the European Parliament and of the Council and Articles 102 to 108 of Regulation (EU) 2017/625 respectively.
EU	European Union

1 INTRODUCTION

Fraud in the agri-food chain affects industry and consumers economically, undermines consumer trust and may lead to serious health issues. Food fraud scandals worldwide, including the addition of melamine to infant formula, the false declaration of horse meat and the illegal use of the pesticide fipronil in cleaning agents leading to contamination of eggs, brought the topic repeatedly into the public arena. The EU has recognised the importance of tackling fraudulent and deceptive practices in the agri-food chain. Since 2019 Member States are required to carry out risk-based controls in order to detect fraudulent and deceptive practices.

This overview report aims to present the main conclusions of the information collected in the context of the Directorate-General for Health and Food Safety (DG SANTE) project “fraud along the agri-food chain”. It is based on two pilot studies of Ireland and Austria and six fact-finding studies of Sweden, Latvia, Portugal, Bulgaria, Poland and Germany. In addition, information was collected through meetings with competent authorities of five other Member States, seminars and workshops.

For the purpose of readability of this document wherever the term ‘Member States’ is used it refers to the eight Member States which were subject to pilot and fact-finding studies unless otherwise stated in this report.

2 OBJECTIVES AND SCOPE

The general objective of the project was to determine the extent to which Member States follow a strategic approach in fighting fraudulent and deceptive practices in the agri-food chain. The project focused on the organisation of the arrangements for official controls performed regularly, with appropriate frequencies determined on a risk basis, to identify possible intentional violations of the rules referred to in Article 1(2) of Regulation (EU) 2017/625 of the European Parliament and of the Council (hereafter: ‘the Regulation’), perpetrated through fraudulent or deceptive practices, as required by Article 9(2) of the Regulation.

Given that Article 9(2) of the Regulation applies to all control areas listed in Article 1(2) it was not possible to collect information for all control areas. The fact-finding studies prioritised control arrangements of the competent authority responsible for most official controls falling under Article 1(2)(a) (“food and food safety”) of the Regulation but also looked into other control areas where this was possible, in particular to identify challenges and good practice examples.

The project took also into account other EU provisions related to the fight against fraud.

3 LEGAL BASIS

The fact-finding studies were conducted under the general provisions of European Union (EU) legislation and, in particular, Articles 116, 117 and 119 of the Regulation.

Full legal references to EU legal acts quoted in this report are provided in Annex 1 and refer, where applicable, to the last amended version.

4 BACKGROUND

The Regulation came into force on 14 December 2019 and introduced a concept that did not feature in the previous Official Controls Regulation (Regulation (EC) No 882/2004 of the European Parliament and of the Council), namely that of tackling fraudulent and deceptive practices.

Article 9(2) of the Regulation introduces a requirement “to perform official controls regularly, with appropriate frequencies determined on a risk basis, to identify possible intentional violations of the rules referred to in Article 1(2), perpetrated through fraudulent or deceptive practices”. Furthermore, the competent authorities should investigate cases where there is a suspicion of non-compliance with Union agri-food chain legislation and, where non-compliance is established, determine its origin and extent as well as the operators’ responsibilities. The competent authorities should also take appropriate measures to ensure that the operators concerned remedy the situation and to prevent further non-compliance. The organisation and performance of investigations and enforcement actions by the competent authorities should duly take into account potential risks and the likelihood of fraudulent or deceptive practices along the agri-food chain.

There is a significant difference between controls aimed at establishing the level of compliance of operators with legal requirements and controls whose purpose is to detect possible intentional violations of the rules referred to in Article 1(2) of Regulation (EU) 2017/625, perpetrated through fraudulent or deceptive practices. The Member State authorities design and carry out controls mainly to verify operators’ compliance with the requirements set out in Union agri-food chain legislation. Standard non-compliances are detected by comparing what the operators are doing against what they are required to do by law. Whilst such non-compliances can be detected by effective controls, it is more challenging to detect what has been deliberately hidden, as in the case of fraud and deception. Controls of the latter are investigative in nature and require a different set of skills compared to traditional official controls such as vulnerability studies of sectors to determine where and when the risk of fraud or deception might occur.

It is more difficult to evaluate the suitability and effectiveness of Article 9(2) related control arrangements as fraudulent or deceptive practices are hidden and the scale of the problem is unknown. Guidance on performing Article 9(2) related controls was, at the time of the DG SANTE project “fraud along the agri-food chain”, not available at EU level.

Commission Implementing Regulation (EU) 2019/1715 sets up the information management system for official controls managed by the Commission (IMSOC). It integrates several information systems including tools for the Alert and cooperation network (ACN). Already since 2015, members of the EU Food Fraud Network exchange information within the ACN system (iRASFF¹). This exchange of information is an essential element for effective cross-border investigations and for strategic assessments of the threat of fraud risks (Articles 102 to 107 of Regulation (EU) 2017/625).

5 METHODOLOGY

To prepare for the series of fact-finding studies, DG SANTE carried out an online survey (“EUSurvey”) in the first semester of 2020 to get an overview of the measures taken by Member States in relation to this topic.

The objective of the survey was not to get an accurate picture of the situation in the Member States as it was not possible to capture comprehensive information on this complex issue by means of a questionnaire.

Therefore, the results of this survey had to be interpreted with caution, in particular as:

- it was not always clear from the replies whether all relevant authorities contributed to the reply to the questionnaire;
- for Member States with devolved competences the responses were difficult to interpret;
- in some cases inconsistent answers and contradictory information were provided.

Although the information collected through this desk study helped to prepare the methodology for the fact finding studies, the quality of the data was not sufficiently good to carry out a meaningful assessment.

In the second semester of 2020 two pilot studies (Austria and Ireland) were carried out. The main purpose of these pilot studies was to prepare the methodology for the fact-finding studies. For this reason, the reports of the two pilot studies were not published. The reports of the fact finding studies, which were carried out in 2021 (Sweden, Latvia, Poland, Germany) and 2022 (Portugal and Bulgaria), are published on the Commission’s website: <https://ec.europa.eu/food/audits-analysis/audit-report>.

¹ ‘iRASFF’ means the electronic system implementing the Rapid Alert System for Food and Feed and ACN procedures described in Article 50 of Regulation (EC) No 178/2002 of the European Parliament and of the Council and Articles 102 to 108 of Regulation (EU) 2017/625 respectively.

6 OVERVIEW OF MAIN FINDINGS OF THE FOOD FRAUD PROJECT AND GOOD PRACTICE EXAMPLES

6.1 UNDERSTANDING FRAUD IN THE AGRI-FOOD CHAIN

EU legislation does not provide a definition of ‘fraudulent or deceptive practices’ or ‘fraud in the agri-food chain’. The Regulation refers in several provisions to ‘fraudulent or deceptive practices’ but does not define these terms. Article 2(21) of Implementing Regulation (EU) 2019/1715 provides a definition of ‘fraud notification’ for the purpose of cooperation between Member States, exchanging information, in particular within the agri-food fraud network, to allow enforcement actions. It gives an indication of the key elements to be considered in relation to fraud:

- Fraud notification = a non-compliance notification in iRASFF concerning suspected intentional action by businesses or individuals for the purpose of deceiving purchasers and gaining undue advantage therefrom, in violation of the rules referred to in Article 1(2) of Regulation (EU) 2017/625.

The majority of Member States’ authorities stated that the lack of an agreed definition of ‘fraudulent or deceptive practices’ at EU level poses a challenge for the implementation of fraud related provisions of the Regulation. The view was expressed that a legal definition at EU level would provide clarity and would facilitate the implementation of Article 9(2) at national level.

In the absence of such a definition at EU level, Member States base their efforts to fight fraud in the agri-food chain on national legislation. Some Member States have definitions related to fraudulent practices, for example “false information”, “deceit” or rely solely on the general definition of fraud set out in the national criminal code.

The absence of a clear definition of ‘fraudulent or deceptive practices’ in the agri-food chain makes it also difficult for the competent authorities to consider a broader approach to fraudulent and deceptive practices in order to identify all possible violations of the rules and control areas referred to in Article 1(2) of the Regulation and to distinguish between:

- non-compliances related to mismanagement by act or omission leading to an irregularity including errors and failings and
- all intentional violations which are deliberate or intentional non-compliances (as opposed to carelessness, accident or error).

In any case, the authorities must plan and carry out controls to identify suspicions of fraudulent and deceptive practices in the agri-food chain and investigate any suspicions as well as intensify official controls as appropriate. The Regulation does not require the authorities to prove the intention of the wrongdoing. The latter is usually achieved through police investigations led by the public prosecutor or in some cases through investigations of specialised fraud investigation units of the competent authorities.

Competent authorities of Finland and the Netherlands, which were not the subject of a pilot or fact-finding study, indicated that in view of organising fraud-related controls and investigations, that they apply a pragmatic approach considering that fraud is a flexible concept rather than applying a narrow definition of a specific criminal activity. The decision on how a non-compliance is classified and whether it is a criminal activity is a case-by-case decision and it may require the involvement of the prosecutor.

Some competent authorities stated that fraudulent practices are often unrelated to food safety and are mainly linked to food quality. However, a significant number of examples collected in the context of the fact-finding studies were either directly related to food safety risks or indirectly, due to a lack of traceability of products, and as a consequence food safety risks could not be excluded.

Examples of fraudulent practices with a food safety risk:

Hazelnuts, as declared on the label of the product, replaced by low quality almonds, contaminated with aflatoxins.

Meat products processed and sold by establishments which are not approved, which limits the possibilities to trace back the origin of the meat as well as uncontrolled standards of hygiene in the illegal establishment.

While fraudulent and deceptive practices, as seen during the fact-finding studies, frequently have a cross-country dimension, many examples were also noticed where fraud risks had a national, regional or even local dimension.

Example of a regional case:

There is a special tax on sugar products in Denmark which is motivating illegal trade of sweets and soft drinks from **Sweden** to Denmark aiming to avoid the sugar tax. Controls carried out by the Swedish authorities around the border with Denmark identified fraudulent practices including violation of traceability requirements and labelling rules (including counterfeit), misleading customers by selling old candy with new expiration dates, purchases and sales from unregistered food business operators and tax crimes.

6.2 ORGANISATION OF THE FRAUD RELATED CONTROLS

6.2.1 Strategic and targeted approach

The fight against fraudulent and deceptive practices in the agri-food chain has a cross-sector and cross-administration dimension. It generally benefits from:

- a national strategy which establishes the overall objectives and priorities and provides a framework for all relevant players involved in combating fraud;
- regular meetings between all relevant competent authorities, other law enforcement authorities (Customs, national police, tax authorities, laboratories, etc.) and representatives of the public prosecutor's office to strengthen cooperation, ensure the

exchange of relevant information and ideas and to learn from each other based on examples of cases and control initiatives.

Member States that have established a national framework to fight fraud in the agri-food chain and have established cross authority task forces demonstrated the importance and usefulness of such structures.

Good practice example:

Germany: A working group made up of food safety authorities, judicial authorities and police was established in 2017 under the chairmanship of the Land of Berlin and the outcome of the work of this group was a final report with several recommendations on fighting food fraud. A conference on food fraud with experts from several authorities including, amongst others, the Federal Ministry of Food and Agriculture, the Federal Office of Consumer Protection and Food Safety, Länder authorities, police and prosecutors' office continued the discussion on this topic and the follow-up of the implementation of the recommendations.

A pro-active approach is required in combating fraudulent practices. It is not enough to respond to a specific situation, but also necessary to plan regular controls based on all available data and information. While an intelligence-based approach to fraud investigations (e.g., controls planned in response to tip-offs) has proven to be successful, there is still the need to actively look for the presence of fraudulent and deceptive practices in the context of official controls. The examples collected in the context of the fact-finding studies clearly demonstrate that a risk-based approach to detecting fraudulent and deceptive practices can be successful, if implemented effectively.

For some Member States with specialised food fraud teams within the competent authorities, the implementation of Article 9(2) can be a challenge as there are resource constraints and it may be difficult to put into place effective intelligence based anti-food fraud arrangements complemented by further risk-based control arrangements. In contrast, competent authorities with police powers and who perform a wide range of control and enforcement activities beyond food safety are well placed to implement Article 9(2) controls and perform intelligence-based investigations. The approaches are all different, with advantages and disadvantages and it cannot be concluded from the fact-finding studies that one would be more suitable than the other to fight against fraud in the agri-food chain. Nevertheless, case-specific investigations are not to be confused with risk-based controls carried out on a set frequency as required by Article 9(2).

6.2.2 Implementation of the provisions of Article 9(2) across control areas

Although Article 9(2) of the Regulation applies to all eleven control areas referred to in Article 1(2) of the Regulation, for some control areas it appears to be difficult to identify fraud vulnerabilities and risks. A guidance document for Member States, based on the results of the fact-finding studies, was published on the following website:

https://publications.jrc.ec.europa.eu/repository/bitstream/JRC131525/JRC131525_01.pdf

This guidance document provides examples of fraud risks for all sectors and is the main output of the project.

6.2.3 Planning and Performance of Article 9(2) controls

At the time of the fact-finding studies, none of the Member States had arrangements in place for implementing Article 9(2) of the Regulation across all areas referred to in Article 1(2) of the Regulation. The competent authorities in charge of control arrangements for food and food safety were, in general, more advanced in fighting fraudulent practices than those of the other sectors. For example, no example of good practice was identified for fraud related controls on organic products and production, although this area is highly vulnerable to fraudulent practices.

Article 9(2) can be implemented in different ways:

- The nature of some Article 9(1) controls and the control methods used are suitable to fulfil the objectives of Article 9(2) controls at the same time. This is the case where the controls aim to identify the use of potentially harmful substances. The result of these controls can point to the illegal use of substances or the use of illegal substances (e.g., plant protection products/pesticides).
- The incorporation of fraud-related control aspects into Article 9(1) controls is an option, in particular when the control activity is simple and easy to combine with other control activities (e.g. use of a quick test for detecting the presence of sulphite in minced meat, cross-checks of suppliers, systematic analysis of data contained in the Trade Control and Expert System (TRACES²) for the planning of targeted controls).
- Some Member State authorities considered that fraud related control campaigns at national level or the participation in EU coordinated actions could be seen as Article 9(2) controls, which is not the case unless these campaigns are continued at regular intervals and in relation to the same product group or activity (e.g., targeted controls on seasonal products).
- For some fraud risks, control methods specifically designed for the purpose of Article 9(2) may be needed (e.g., identification of animal species with DNA testing).

All Member States carry out some controls related to adulteration of food products, use of illegal substances and/or quality aspects of food, mainly in the context of Article 9(1) or marketing standard checks. Although the intensity, scope and scale of e-commerce controls vary significantly between Member States; these controls generally consider fraud related aspects.

Portugal and Latvia have Article 9(2) control arrangements in place for the control area of food and food safety, although there is still room for further improvement as regards the risk-based planning of these controls.

² https://food.ec.europa.eu/animals/traces_en#about-traces

Good practice examples:

The **Portuguese** Economic and Food Safety Authority, which is a specialised authority responsible for food safety and economic surveillance, covers food controls across the entire supply chain with the exception of primary production. It establishes annually a risk-based operational plan on fraudulent and deceptive practices in the food area. As these controls are planned on a yearly basis and carried out regularly to detect fraudulent and deceptive practices, they contribute to the implementation of the provisions of Article 9(2) of the Regulation.

The system of controls to detect fraud in the agri-food chain in **Latvia** is well established and the Food and Veterinary Service has developed several good practices for risk assessment of operators and for carrying out Article 9(2) controls such as profiling company directors/consultants and analysing tax defaults to establish risk. They received good co-operation from within the Food and Veterinary Service, and from other authorities. The unit responsible for fraud carries out joint controls with the sectoral units from central level and staff from the territorial units so that they have the necessary expertise and support for in-depth inspection in certain establishments and for the collection of laboratory samples. These joint controls have led staff of the territorial units to integrate certain aspects of fraud controls into their regular checks of operators. On this basis, and through focusing on several priority areas, including food safety and traceability of fruit and vegetables, they have made progress in combatting food fraud.

Ireland and Germany make significant efforts to combat food fraud. However, in the absence of a control programme and documented procedures for Article 9(2) controls, both Member States could not demonstrate that Article 9(2) is systematically implemented. In order to overcome this hurdle, Germany established a working group to propose a system for earmarking Article 9(2) controls in the control programme. This would allow the authorities to better identify the different purposes of controls, including those to identify fraudulent practices. In Ireland work on the Irish Food Fraud Strategic Assessment has begun in order to inform the development of risk based control plans for the implementation of Art. 9(2) requirements

Also, Member States which were not subject of the pilot and fact-finding studies provided information showing actions and progress towards the implementation of Article 9(2).

Potential fraudsters are motivated by the financial benefit to be gained through illicit activities and by the opportunity presented when private and public control arrangements are weak. Authorities need to consider the nature of fraudulent and deceptive practices when developing a comprehensive planning process to pick-up fraud risk signals and to translate these without delay into control actions.

Systematic and comprehensive fraud vulnerability assessments are in general not part of the risk-based planning of controls of Member States. Most Member States' Article 9(2) controls currently focus on products or activities that are already known to be vulnerable to fraudulent and deceptive practices or that have been subject to Europol or EU coordinated

actions/control programmes (e.g., authenticity of olive oil, DNA testing of meat and fish, illegal pesticides). Although cases shared by the Member States and the Commission via the ACN are useful for the planning of Article 9(2) controls, there is no systematic exchange of national fraud cases at EU level. During the fact-finding studies several examples of cases were presented that would be valuable for the planning of controls in all Member States.

All Member States considered Europol and EU coordinated actions and programmes important and useful for learning lessons. Some Member States used these control campaigns to get sub-national authorities more involved in the fight against fraudulent and deceptive practices and, based on the results and experience gained, included the control activities in their national control programmes.

The collection and use of relevant data is a condition for performing risk-based planning for Article 9(2) which includes the identification of fraud vulnerabilities as part of the risk assessment. The use of and access to relevant information varied significantly between Member States. The fact-finding studies revealed that Member States find it challenging to perform adequate vulnerability assessments and to identify new emerging risks. In order to overcome this challenge, some Member States have improved their capacities to collect and analyse data. This includes media screening, monitoring of e-commerce trade and the collection and assessment of data from horizon scanning, which is a systematic examination of information to identify potential threats, risks, emerging issues. Member States are considering developing new IT tools and artificial intelligence for dealing with such big data.

Good practice example:

Bavaria developed an early warning system (called ISAR), which goes beyond fraud. It is used to identify health and fraud risks related to food as early as possible. It is a tool for analysing the volume, origin and price of foods imported to Germany, based on data from the German Foreign Trade Statistic. The aim of ISAR is to identify changes in the flow of commodities for example, as a result of crop failure. These changes can impact the price level and create incentives for fraud or may increase health risks. The tool, which is used by all German Länder, proved to be effective.

In the context of the fact-finding studies several examples were given that show the importance of a comprehensive approach as fraudulent practices in the agri-food chain may be linked to other illegal activities, such as tax evasion, undeclared and illegal work, theft and smuggling.

Good practice example:

Since 2017, several **Portuguese** authorities (including the Directorate-General for Agriculture and Rural Development, the Directorate-General for Food and Veterinary, Maritime Police, the National Republican Guard and ASAE) cooperate closely to fight the illegal harvest of live bivalve molluscs in particular in the estuary of the Tagus river. This case is a good example that fraud in the agri-food chain can be associated with other criminal activities including the use of illegal workers and tax fraud.

In the context of planning Article 9(2) controls Member States' authorities need to consider the availability of suitable control methods, including for testing of food authenticity. Suitable control methods are not only needed to identify a suspicion of a fraudulent or deceptive practice but are crucial for any subsequent prosecution. While testing for some parameters is well established, for other parameters testing is known to be problematic or the interpretation of test result is difficult. Some control methods are well established but require additional resources as they are time consuming or require intensive exchange of information between the different authorities (e.g. comprehensive mass-balance³ and traceability exercises to track ingredients or products throughout the supply chain).

Good practice examples:

The **German** National Reference Centre for Authentic Food hosted by the Max-Rubner Institute, supports the implementation of official controls on food authenticity. It provides expertise and supports the development of methods to establish the authenticity of foodstuffs.

Within the **Austrian** Agency for Health and Food Safety, the competence centre for the food chain provides targeted sector-specific advice on food law related issues and measures to avoid deception.

6.2.4 Training and knowledge of staff performing official controls

The needs for fraud related training of staff performing official controls varies between authorities given that the organisation of official controls is different. Regardless of the organisation of the controls all inspectors should receive at least basic training on fraudulent and deceptive practices to raise awareness of the topic and in particular to ensure that officials of the competent authorities are informed of the actions required when a fraud suspicion arises. Some Member States gave examples where the work of the enforcement authorities responsible for the investigations of fraudulent practices was undermined by investigation/controls by staff who had not been trained on fraud issues.

Good practice example:

The **Swedish** Food Agency developed an e-learning tool with a clear focus on fraud related controls. This e-learning tool is available to all competent authorities.

Some Member States' authorities systematically provide fraud-related training for newly recruited inspectors or to all staff, perform awareness raising campaigns or use EU coordinated actions and programmes to get relevant competent authorities involved. However, most competent authorities had not identified training needs in relation to fraudulent practices, mainly as the topic had not yet been properly considered, with the exception of the control area of food and food safety.

³ Mass balance takes account for all quantities of raw materials, waste, work-in-progress and finished product.

In some Member States, the competent authorities have police powers and are trained on official controls as well as criminal investigations. Also, staff of specialised “food fraud investigation” units of the competent authorities receive specific training on investigations.

The active involvement of staff from all enforcement authorities including the competent authorities, police and tax authorities as well as the public prosecutor’s office in training (as trainers and trainees) on fighting fraudulent practices in the agri-food chain is highly beneficial as it helps to share knowledge, create a better understanding of the roles of the authorities and stimulates cooperation.

6.2.5 Cooperation and Coordination within and between Competent Authorities

The level of cooperation between national authorities in relation to fighting fraudulent and deceptive practices significantly differs between Member States and ranges from cooperation solely in relation to the coordination of the investigation of specific cases, to joint actions or structured and regular cooperation involving a wide range of authorities.

Some authorities have concluded cooperation agreements with the aim to provide clarity about their responsibilities and to support a structured approach. Some cooperation agreements also include the exchange of data. Some Member States’ competent authorities also work together with industry associations.

Coordination of actions is not only crucial between but also within competent authorities where different units exist with distinct control functions (e.g. investigations, targeted audits and regular official controls).

Good practice examples:

In the wake of the horse meat crisis, the Food Safety Authority of **Ireland** established the Food Fraud Task Force. Its role is to act as a communications, coordination and networking group where intelligence and research can be shared. It comprises representatives from the Official Agencies and a number of other enforcement agencies (e.g., national police, tax authorities, Food Standard Agency in Northern Ireland, Competition and Consumer Protection Commission, Department of Social Protection, etc.).

The Netherlands Food and Consumer Products Safety Authority created an interface between the inspection function of the authority and their fraud investigations unit. For this purpose, a fraud expertise hub was established in 2016. It deals with cases that do not qualify for investigations by the fraud investigations unit but where support from a fraud investigation expert is required.

In **Finland** all agri-food chain authorities discuss latest developments and exchange experiences on fighting fraudulent practices twice a year during virtual meetings.

6.3 COOPERATION AND ASSISTANCE WITH OTHER MEMBER STATES AT EU LEVEL

The Member States consider that the ACN (Food Fraud) is an important tool and most of them make active use of this tool to notify cross-border cases for follow-up. However, in some cases and for different reasons certain Member States were slow to respond to requests for cooperation made by other Member States:

- lack of cooperation between authorities in particular where a reply was required from sub-national level;
- staff shortage
- technical problems and misunderstandings.

In some cases the Member States communicate through police channels as the police were involved and did not record this in the system.

6.4 THE ROLE OF OTHER LAW ENFORCEMENT AUTHORITIES, THE PUBLIC PROSECUTOR AND THE COURTS

6.4.1 *The role of other law enforcement authorities*

Examples of good cooperation between the competent authorities under the Regulation and other law enforcement authorities were presented by many Member States during the fact-finding studies. However, in some Member States, according to the competent authorities, the national police did not consider fraud in the agri-food chain a priority.

Several Member States work closely together with the tax authorities. However, in most Member States the cooperation of the tax authorities is limited to specific projects or there is no interest to work together with the competent authorities, which is a missed opportunity.

Good practice examples:

The **Finnish** agri-food authorities found in the context of a pilot project that through their co-operation with the tax administration they increased their understanding of the multi-sectoral aspects of fraud and found a strong correlation between compliance with tax liabilities and food law.

The **Latvian** Food and Veterinary Service make use of a database operated by the revenue service to identify food business operators engaged in tax evasion.

6.4.2 *The role of the public prosecutor and measures to facilitate the transmission of information*

Some Member States have prosecutors specialised in fraud in the agri-food chain. According to prosecutors interviewed during the fact-finding study it is crucial to have expertise on food fraud across the entire chain of controls and investigations, as the cases are often complex and if they take too long to process this may result in a case being barred by statute and prosecution not going ahead.

However, some competent authorities stated that, even where there is good cooperation during the investigations, the prosecutors do not always keep the competent authorities informed about progress made with the case and the outcome of court proceedings. Such feedback would be important to help the enforcement authorities to improve future investigations.

In most cases the measures to facilitate the transmission of information were not formalised and sharing information related to criminal investigations with other national authorities and other Member States' authorities may be a case-by-case decision by the prosecutor or even by the judge.

Some authorities send a specific feedback form to the prosecutor's office to help ensure that they receive information on the outcome of the prosecutor's investigations.

6.5 ACTIONS TO PREVENT THE RE-OCCURRENCE OF FRAUDULENT PRACTICES AND PENALTIES

The measures taken depend on the type and severity of the non-compliance and the classification of the non-compliance in relation to fraudulent and deceptive practices as well as the law that is used to impose sanctions or penalties on the operator.

In all Member States, the competent authorities can take immediate actions to stop a non-compliance and may impose administrative sanctions, sometimes in combination with penalties imposed by the courts.

While court cases can take years and are resource intensive, the authorities can impose administrative sanctions directly which have an immediate and sometimes even deterrent effect.

Article 139(2) of the Regulation requires that Member States shall ensure that financial penalties for violations of this Regulation and of the rules referred to in its Article 1(2), perpetrated through fraudulent or deceptive practices, reflect, in accordance with national law, at least either the economic advantage for the operator or, as appropriate, a percentage of the operator's turnover. In most Member States it is at the discretion of the court to decide within the framework of the national legislation on the penalties to apply. The courts do not systematically ask the authorities for an estimation or calculation of the potential gain obtained through the illegal activities. Only Sweden and Germany had national arrangements for implementing Article 139(2) in place.

Good practice example:

A complete revision of the law on asset recovery was carried out in **Germany** in 2017. According to the provisions laid down in national law, the offender may always be deprived of the proceeds of the offence or equivalent compensation for value. This is regardless of whether there are overriding claims of third parties. The gross principle applies when establishing the amount to be confiscated. Basically, everything that has been obtained from the offence must be confiscated.

6.6 MECHANISM FOR ENABLING REPORTING OF INFRINGEMENTS

Most competent authorities responsible for food and food safety have mechanisms in place for reporting infringements related to fraudulent and deceptive practices, for the recording of such reports and their follow-up, including anonymous reports. For this purpose, the authorities have a dedicated telephone number, e-mail addresses or allow reporting via online forms.

Most Member States' competent authorities follow-up all anonymous complaints, mainly on a case-by-case basis, depending on whether the information is considered reliable and sufficient evidence was provided.

Good practice examples:

In **Portugal** complainants have the right to be informed about the follow-up of the complaint and benefit from witness protection measures in criminal proceedings. The authorities must not disclose personal data even when the defendant requests access to information in the context of criminal or administrative proceedings.

The Food Safety Authority of **Ireland** logs each case which is assigned a reference number before assigning food fraud complaints to the relevant authority for follow-up. The Food Safety Authority can then track the case and get the results of the investigation. When the case is closed the complainant is informed about the outcome.

6.7 FRAUD INVESTIGATIONS

There are three different approaches to investigations of fraudulent practices:

- Staff of the competent authority have no powers to investigate fraud and refer cases of fraud suspicion to the national police. Although some national police forces have police officers with some qualification in environmental, public health and/or food law, cooperation with the competent authorities remains crucial.
- All staff of the competent authorities have police powers and perform the investigations.
- The competent authorities have specialised investigation teams entrusted with some investigation and police powers.

Specialised investigation units of some Member States' competent authorities have highly qualified staff covering a wide range of skills and expertise (analysts, financial experts, legal specialist, etc.) and have enforcement and investigation powers. These teams operate based on intelligence (data analysis, whistle-blower information and reports from official controls). In most cases, the controls of these units are reactive and case specific and as has already been highlighted, intelligence-based investigations cannot be considered as Article 9(2) controls.

7 ACTION TAKEN OR PLANNED BY THE COMMISSION SERVICES

The Directorate for Health and Food Audits and Analysis of the Directorate-General for Health and Food Safety carried out a project between 2020 and 2022 in order to collect information on the arrangements put in place by Member States to fight fraud in the agri-food chain and has published a technical report entitled “Fighting fraudulent and deceptive practices in the agri-food chain”. This report presents the challenges, opportunities and several good practice examples in relation to fraud related controls in the Member States. It was developed to provide an important resource to support national authorities in their efforts to fight fraudulent and deceptive practices in the agri-food chain and to ensure the integrity of food production in the EU.

The report has been published on the following Commission’s website: <https://publications.jrc.ec.europa.eu/repository/handle/JRC131525>

The Commission’s Better Training for Safer Food training initiative is used to improve the knowledge on fighting fraudulent and deceptive practices:

- The Commission has delivered training on food fraud and e-commerce - investigation techniques to Member States’ officials through a series of 14 workshops between 2018 and 2023.
- The Commission developed two eLearning modules focusing on “Agri-food fraud investigation techniques” and on “Agri-food fraud investigation techniques in e-commerce” to improve the knowledge and skills of official control staff on specific investigations techniques used to identify agri-food fraud, to improve knowledge of agri-food fraud and agri-food fraud qualifying criteria, to present good practices, tools and procedures relating to investigation techniques helping to detect fraud and to help disseminate best practices on e-commerce surveillance.
- The Commission has also developed, and is training third Countries investigators on, “investigations techniques to be deployed during official controls to deter potential fraud along the agri-food chain and on e-commerce”, with the aim to train third Country authorities on the European system of Controls.

The Commission contributes to the discussions on the development of CODEX guidelines on prevention and control of food fraud and, in this context, makes also use of the experiences gained from the 2020-2022 project.

The Commission intends to further invest in coordinated control plans in the future, to allow getting insight of special commodities and product groups. As the results on the coordinated control plans on herbs and spices (2019-2021) and on honey (2021-2022) have shown how these focused actions can give valuable insights for risk management and targeted controls to the competent authorities in the Member States. Further actions will focus on illegal plant protection products (2022-2023) and on seafood short weighting (2024).

The Commission intends to further invest in the development of analytical methods to detect adulteration (e.g: unauthorised restoring of meat colour of tuna fillets, exogenous sugars in honeys, adulteration of beeswax with paraffin and/or stearin and stearic acid).

The Commission continues the weekly screening of all ACN notifications reported in iRASFF to identify potential contravention of the EU agri-food chain legislation, which may have remained undetected by Member States and might need adequate coordination and follow-up at the European Union level. The relevant authorities are informed about these cases which are transferred for further investigations.

The Commission will also continue to engage in OPSON (a Europol/Interpol joint initiative targeting fake and substandard food and beverages) and Europol's operation Silver Axe (targeting counterfeit and illicit trade of pesticides). It will also continue to engage in EMPACT (European Multidisciplinary Platform Against Criminal Threats), a security initiative driven by EU Member States and coordinated by Europol, to identify, prioritise and address threats posed by organised and serious international crime, including specific actions on environmental crimes (e.g. actions on illegal trade of protected European eels⁴ and illegal trade of pets).

The Commission supports the actions of Europol with specific intelligence on the targeted agri-food items and participates in the specific training for participants.

ANNEX 1 – LEGAL REFERENCES

Legal Reference	Official Journal	Title
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)

ANNEX 2 - DETAILS OF INDIVIDUAL FACT-FINDING STUDIES

Country	Date of Audit	SANTE ref. no.
Sweden	19 April 2021	2021-7148
Latvia	14 June 2021	2021-7146
Poland	6 September 2021	2021-7147
Germany	22 November 2021	2021-7149
Portugal	28 March 2022	2022-7372
Bulgaria	16 May 2022	2022-7371

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