Keeping food in check

A snapshot of national official food controls – and what this means for consumers

BEUC The European Consumer Organisation

The Consumer Voice in Europe

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Introduction

In the EU, the primary legal responsibility for complying with food safety and labelling laws lies with food business operators: from farmers and processors to shippers and retailers. Still, **Member States have a critical role in enforcing EU legislation through so-called 'official controls'**. In turn, the European Commission has the essential duty to ensure via audits of national food check systems that Member States carry out official controls in accordance with EU requirements.

EU legislation on food controls[1] requires **Member States to allocate adequate financial resources to perform official checks.** For certain types of controls (e.g. of slaughterhouses and meat cutting plants, of milk production and of certain goods subject to systematic border control), the legislation establishes mandatory fees. For other activities, it is up to Member States to decide whether to fund the controls via fees or through other means (e.g. through the general tax system).

In recent years, widespread food scandals have hit the headlines in several EU countries: from lasagne containing horsemeat to eggs tainted with Fipronil and meat unfit for human consumption. While the EU's food safety and labelling rules are among the most stringent in the world, the rise in such scandals puts consumers' health at risk.[2] And even when food safety is luckily not at stake[3], scandals damage consumers' confidence in their food.

Consumers are entitled to wonder whether authorities are effectively supervising law abidance by food businesses – and whether they have the means to do so. It is an increasing concern that the available resources too often do not match up to the needs of a properly functioning system of official controls. The European Court of Auditors' special audit of the checks on chemical hazards in food found that whilst the EU's food safety model has a sound basis and is considered as a reference model around the world, "it is currently overstretched".[4] In the wake of the Polish beef scandal earlier this year (see section 3), the European Commissioner for Health and Food Safety himself, Vytenis Andriukaitis, insisted that no matter how strong EU legislation looks on paper it is worthless if not implemented.[5]

Scope of this report

EU legislation obliges Member States to report to the European Commission on their official control activities on a yearly basis. This document analyses some of these reports and attempts to identify broad trends from the information submitted by Member States over a period of several years. It provides a **snapshot of how various Member States are fulfilling their food control duties, and what the main challenges are.** It is based on information gathered through several consumer organisations from the BEUC network and does not aim to be (nor should it in any way be considered as) a comprehensive study. Based on the observed trends, the report makes several recommendations for more effective and transparent official food controls and for a better enforcement of EU food safety and labelling laws.

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1 | Regulation (EC) 882/2004 was recently revised in 2017 and the new Official Controls Regulation (EU) 2017/625 will apply as of 14 December 2019.

2 | At least 37 infants were contaminated by formula milk tainted with Salmonella in France in 2017.

3 | The horsemeat scandal was triggered by a fraud whereby meat products and ready meals labelled as containing beef were found to contain horsemeat (in some cases up to 100%).

4 | European Court of Auditors Special Report 02/2019, 'Chemical hazards in our food: EU food safety policy protects us but faces challenges'.

5 | Vytenis Andriukaitis, 'Call to action on food fraud', Blog, 8 February 2019.

Executive summary

Consumers should be able to trust that the food they buy is safe and that it is what it says on the packaging. Hard-won consumer confidence in the food supply chain can easily be damaged by successive reports of food businesses not living up to expectations by not complying with food laws.

While most food rules are set at an EU level, Member State national authorities have a crucial role in carrying out checks (known as 'official controls') to ensure that these obligations are met by the food businesses in their countries.

This report outlines the following main findings:

• **Reporting on food check activities is inconsistent**

Currently, the presentation of data on the official controls that have been undertaken can vary significantly between Member States – and even within the same Member State – from year to year. Furthermore, some countries do not publish data from previous years, limiting the possibility to identify long-term trends.

• **There is a declining trend in resources and in the overall number of inspections carried out by Member States**

To ensure the national enforcement of food laws, it is essential that adequate resources are dedicated to performing official controls on businesses manufacturing, processing, distributing, preparing or selling food. However, in many EU countries there is a downward trend in such funding and subsequently in the number of inspections carried out.

• **Checks in sectors important for food safety are decreasing**

Even in sectors where food safety is paramount to avoiding contamination and potential ill health for consumers – such as foods of animal origin or in the hospitality sector – significant reductions in checks have been seen in certain Member States.

• **Labelling checks are given insufficient priority**

It is important that authorities make sure that what consumers see on food labels is accurate and not misleading. However, checks in this area are often neglected and there have been severe reductions in the number of controls undertaken on labelling in some countries.

1 Member States' patchy approach to reporting on food controls

In brief: The quality and availability of Member States' reporting varies greatly, preventing meaningful comparisons between countries – and sometimes even within one country – across several years.

The EU Official Controls Regulation requires each Member State to produce a Multi-Annual National Control Plan (MANCP). Such plans must outline how national authorities intend to implement their official controls obligations in their countries over several years. In addition, each Member State must submit an annual report to the European Commission detailing how they have implemented the MANCP. According to the legislation, these annual reports should include information covering the previous year's official controls. They should mention the results of controls and audits and the type and number of cases of non-compliance, for example.

However, as the European Commission itself has acknowledged, these reports "vary significantly in the presentation of data and in the nature of the data presented".[6] This often makes it difficult to identify and compare trends in official controls across countries. For example, Member States may define and report categories of official controls in different ways. Or they may include in their figures the results of controls on non-food products – such as toys or tobacco – that fall outside the scope of the EU legislation on official food and feed controls.

The good news is that the revised Official Controls Regulation (2017/625)[7] – which will apply from December 2019 – is expected to help address this problem in the future by introducing a standard model form for the presentation of Member States' annual reports.[8] Indeed, whereas some Member States provide information in a generally consistent and codified manner, many do not. In

addition, the format used to report on certain inspections or staff resources can change from year to year, preventing comparisons. The standard model form, by setting out the information and data to be reported, will remedy this shortcoming. It will allow Member States to more easily and quickly collate annual report information at central levels and submit it to the EU Commission services.

Furthermore, Member States often have significantly different approaches to making these reports publicly available. For example, the German Ministry for Consumer Protection and Food Safety

has made all its annual reports since 2005 available on its website[9], enabling the identification of long-term trends. However, other Member States including France publish only the most recent reports, preventing this type of scrutiny.

The European Commission itself is also meant to publish an annual overview report on the implementation of official controls by Member States. This obligation has regrettably not been met: only one such report has been published in the past five years (covering multiple years).

Despite the lack of consistency in reporting across the different Member States, which makes it impossible to compare the efficiency of official control systems across Europe, some clear themes can still be identified from examining these reports, as explained in the next sections.

6 | European Commission, 'Report on the overall operation of official controls performed in the Member States (2014-2016) to ensure the verification of compliance with food and feed law, animal health and welfare rules', COM (2018) 627, September 2018.

7 | 'Regulation (EU) 2017/625 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.'

8 | 'Commission Implementing Regulation (EU) 2019/723 laying down rules for the application of Regulation (EU) 2017/625 as regards the standard model form to be used in the annual reports submitted by Member States.'

9 | German Federal Office of Consumer Protection and Food Safety, Archive of the Federal Control Plants.

2 Increasingly limited resources

In brief: Just like the number of checks, food control resources are dwindling across several EU Member States. Even in countries where official controls resources have increased, they are not always commensurate with the needs.

With rare exceptions, a common thread running through the Member States' annual reports that we have been able to analyse are the **inadequate resources possessed by national authorities in the execution of their duties.** Indeed, the European Commission's report[10] highlighted that even though they were not obligated to report on resource issues, Member States clearly signalled that the resources available for controls were increasingly limited. Worryingly, they also warned that "a potential further reduction risks negatively affecting the levels and/or quality of controls and the capacity to respond to emergencies".

Belgium

In Belgium's 2016 annual report[11], the Chief Executive Officer of FASFC, the Belgian federal food safety agency, warned that the agency had been forced to tighten its belt and had reached its limit in reducing the number of inspections.

One year later, Belgium's annual report for 2017[12] highlighted the fact that FASFC's budget had been cut yet again: "Since 2012, the government has imposed on federal institutions drastic cost-saving measures aiming to limit spending. For FASFC, this resulted in a cut of 1.78 million euros in 2017[13], limiting expenses to those considered as indispensable to guaranteeing the continuation of the service."

It took two food safety scandals before the Belgian authorities announced an increase in FASFC's budget by two million euros in 2018 – hence only offsetting the most recent cuts (see section 3).

Italy

In Italy, a steep decrease in the number of inspections can be seen in the authorities' own reporting. In 2008, the number of establishments in the country that underwent checks was 407,128, which means that over a third of the total number of establishments (1,200,932) were controlled by authorities.[14] However, by 2017 this figure had dropped significantly: just 176,217 establishments were subject to controls that year. While the total number of

establishments in the country has remained almost identical (in 2017 there were 1,192,561 food establishments), the number of businesses subject to a control was more than halved to just 14.7%.[15]

Greece

In Greece's 2017 annual report[16], the significant reduction of staff involved in official controls and the need to secure financial resources to cover the costs of inspections were also highlighted as key concerns. In fact, the acute downward trend in staff numbers performing official controls has been highlighted as a significant problem in every annual report issued by the country since 2010. The effects of such cuts can be seen in the reduction in the number of controls performed on foods of animal origin (see section 3 of this report).

Spain

Between 2010 and 2017, Spain saw the number of employees responsible for performing official controls shrink from 6,318 in 2010[17] to 5,863 in 2017.[18] This 7.2% reduction in human resources was mirrored by the number of inspections performed in food establishments[19], which saw an 8.6% fall in the same period.

The total number of food establishments in Spain increased during that same period, putting even greater pressure on the reduced resources. While in 2012 each food establishment was inspected at least once per year, in 2017 only 8 in 10 establishments were inspected (despite an increase in the number of official controls performed on food establishments when compared to 2016).

Annual official controls performed on food establishments in Spain (2010-2017)

Number of Official Control Visits — Total Number of Food Establishments
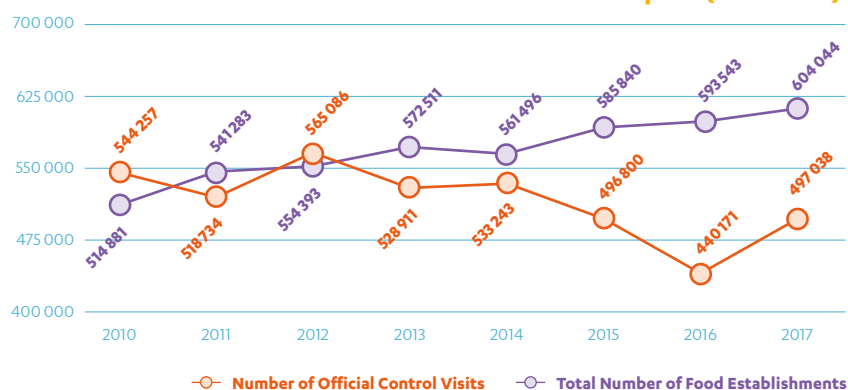
Annual official controls performed on food establishments in Germany (2007-2017)

Number of Official Control Visits — Total Number of Food Establishments
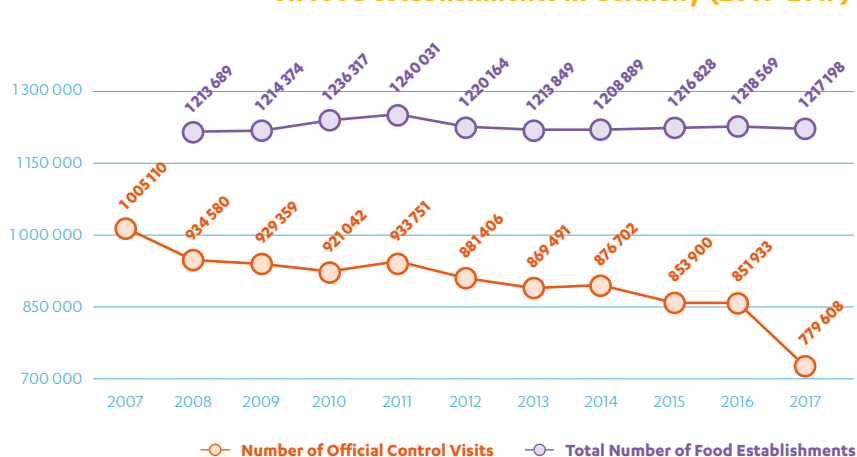
Germany

Over the period 2007-2017, fewer food establishments were controlled in Germany and those that were inspected were visited less frequently.

The total number of registered food businesses remained roughly stable at around 1.21 million[20] during that period. Yet the number of inspected establishments decreased steadily over the decade. In 2007, 44.6% of food estab-

lishments were inspected (562,047), compared to 41.5% in 2017 (504,794).

The total number of inspections also dropped by over 22%, with 225,502 fewer checks being undertaken in 2017 in comparison with 2007.[21-22] Whereas each controlled establishment was subject to 1.7 visit per year in 2007, this figure was down to 1.5 in 2017.

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10 | European Commission, 'Report on the overall operation of official controls performed in the Member States (2014-2016) to ensure the verification of compliance with food and feed law, animal health and welfare rules', COM (2018) 627, September 2018.

11 | See FASFC report 'Facts and figures - Safe food day after day: our job!', 2016.

12 | See FASFC report 'Faits et chiffres - L'AFSCA au service de la sécurité alimentaire', 2017.

13 | Out of a total budget of circa 166 million euros.

14 | Ministero del Lavoro, della Salute e delle Politiche Sociali, 'Vigilanza e controllo degli alimenti e delle bevande in Italia Anno 2008', p. 80.

15 | Ministero del Lavoro, della Salute e delle Politiche Sociali. 'Vigilanza e controllo degli alimenti e delle bevande in Italia Anno 2017', p 22.

16 | Hellenic Republic, Ministry of Rural Development and Food, 'Annual Report 2017', MANCP 2015-2019, Greece, November 2018.

17 | Plan Nacional de Control Oficial de la Cadena Alimentaria 2011-2015, 'Informe Anual 2011'.

18 | Plan Nacional de Control Oficial de la Cadena Alimentaria 2016-2020, 'Informe Annual 2017'.

19 | 'Control General de Establecimientos Alimentarios' to check for compliance with food hygiene and traceability rules and for the proper training of staff.

20 | No data is available for the total number of registered food businesses for the year 2007.
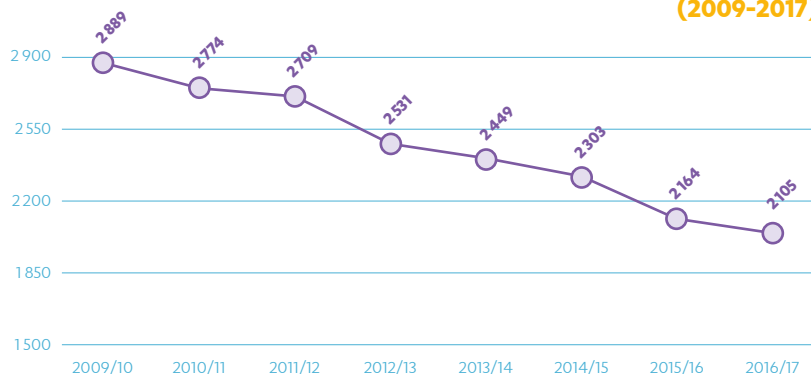
21 | Bundesrepublik Deutschland, Bundesministerium für Ernährung, Landwirtschaft und Verbraucherschutz, 'Jahresbericht 2007 zum mehrjährigen nationalen Kontrollplan nach Verordnung', (EG) Nr. 882/2004.

22 | Bundesrepublik Deutschland, Bundesministerium für Ernährung, Landwirtschaft und Verbraucherschutz, 'Jahresbericht 2017 der Bundesrepublik Deutschland zum mehrjährigen nationalen Kontrollplan nach VO', (EG) Nr. 882/2004.

UK

In the UK, the number of full-time employees working on food law enforcement dropped considerably between 2008 and 2017, by 26.4%. At the same time, the number of food establishments to be enforced rose by 73,130 (a 13% increase).[23-24-25] Consequently, **authorities are pushed to do more with only three quarters of the workforce they had a decade ago.** As BEUC's UK member Which? highlighted last year, this means that on average there was only one compliance staff member policing 403 food businesses in the reporting period 2016/17. This is even more concerning given the poor track record of UK food businesses in complying with food hygiene standards. Research by Which? found that in more than a third of UK local authority areas in 2016-2017 there was not a single 'highest risk' food business that met minimum food standards.[26]

Number of food law enforcers employed in the UK (2009-2017)

| Year	Number
2009/10	2 889
2010/11	2 774
2011/12	2 709
2012/13	2 531
2013/14	2 449
2014/15	2 303
2015/16	2 164
2016/17	2 105

It is therefore perhaps no surprise to see the impact of inadequate staff numbers on food hygiene and food standards enforcement. The Food Standards Agency's (FSA) report on food law enforcement for 2016-2017[27] highlights for example that 14 district councils in the UK did not carry out any sampling whatsoever during this time period "due to resource issues". A year later, the 2017-18 FSA report highlighted that 16 local authorities in England reported no sampling data for that year, also due to resource issues.[28] In less than a decade, the overall number of reported samples has dropped from over 105,000 in 2009-10 to just under 60,000 in 2016-17, a significant reduction of 44%.
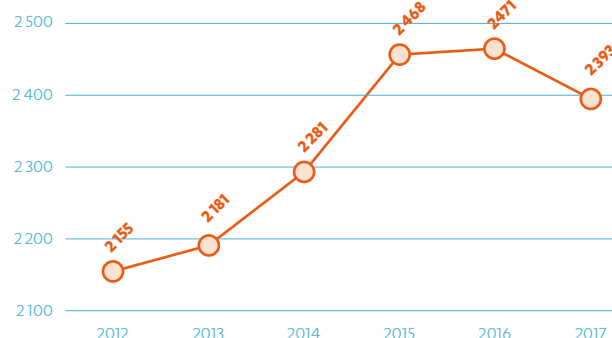
In the UK in 2016/2017, there was on average only one local authorities staff policing 403 food businesses.

Available budget (x1000 euros) for inspection services in the Netherlands (2012-2017)

Year	Value
2012	230 000
2013	278 000
2014	306 000
2015	313 949
2016	333 387
2017	344 157
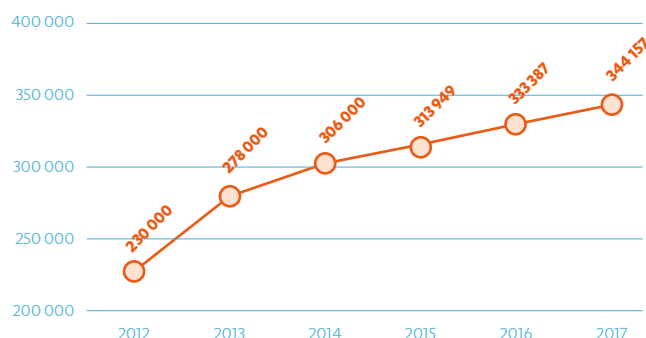
Available staffing levels (ETP) for inspection services in the Netherlands (2012-2017)

Year	Value
2012	2 155
2013	2 181
2014	2 281
2015	2 468
2016	2 471
2017	2 393

Even in countries where the number of employees and the budget allocated to the implementation of official controls appear to have increased, the resources are still not commensurate with the needs.

Netherlands

In the Netherlands, the number of full-time equivalent food control employees increased by 11% between 2012 and 2017, and the budget for the Dutch Food and Consumer Product Safety Authority also increased by a significant 49.6% during this period.

Yet despite this increased budget, the annual report still states that insufficient or zero resources or budget were available for certain activities. This was the case in 2013 for a training of inspectors on the EU's legislation on food additives; in 2016 and 2017 for controls on the identification and registration of cattle, sheep and goats; and in 2017 for the implementation of a project on Shiga toxin-producing Escherichia coli in the meat supply chain. At the same time, the development of a new IT system for the Dutch food watchdog was abandoned earlier this year, although most of the considerable budget of 95 million euros had already been spent.[29]

Austria

In Austria, the number of official controls performed on food businesses appears to have remained stable over the past years.

The Austrian food authorities carried out a total of 43,581 inspections at 33,187 businesses in 2018.[30] This is very similar to the 43,529 inspections that were performed at 33,987 businesses in 2010 (the total number of businesses remained stable over that time period).[31]

The total number of inspections performed by regional veterinary authorities in milk-producing businesses fell from 3,501 in 2010 to 2,259 in 2018. Yet it appears that the total number of businesses supplying milk decreased in similar proportions over the period between 2010 and 2018.

The one business category for which it is difficult to derive clear trends is 'meat establishments' (slaughterhouses, meat processing plants and butchers). While the number of inspections dropped by almost two thirds between 2010 and 2018, one of the provinces (Vorarlberg) did not report any data for the year 2017. A similarly low number of inspections of meat establishments was reported for 2018, but this time no mention was made of any province failing its reporting obligations.

11

23 | The number of UK food establishments in 2008-09 was 561,454 whilst the number in 2016-17 was 634,584.

24 | UK Food Standards Agency, 'Local authority food law enforcement 1 April 2008 to 31 March 2009'.

25 | UK Food Standards Agency, 'Annual report on UK local authority food law enforcement 1 April 2016 to 31 March 2017'.

26 | 'Which?', 'How Safe is the Food You're Eating?', July 2018.

27 | UK Food Standards Agency, 'Annual report on UK local authority food law enforcement 1 April 2016 to 31 March 2017'.

28 | FSA Annual report on UK local authority food law enforcement 1 April 2017 to 31 March 2018

29 | NOS, 'Nieuw ICT-debacle bij overheid, project bij NVWA gestaakt', April 2019.

30 | Federal Ministry for Labour, Social Affairs, Health and Consumer Protection, 'Food Safety Report 2018: Figures, Data, Facts from Austria', June 2019.

31 | Bundesministerium für Gesundheit, 'Lebensmittel-sicherheitsbericht 2010: Zahlen, Daten, Fakten aus Österreich', June 2011.

3

Close-up: foods of animal origin

In brief: Meat, dairy, milk and eggs can all be easily contaminated. But these foods do not necessarily receive the special attention they deserve.

Because of the high risk for foodborne diseases, foods of animal origin require special attention during all stages of production and supply in order to avoid contamination and potential ill health for the consumer. Therefore, it is essential that establishments producing, processing or handling meat, dairy or milk function correctly and according to strict hygiene rules.

Nevertheless, **the number of official controls undertaken in such establishments to ensure that high hygiene standards are being met has been cut dramatically over the past years.** It is therefore probably no coincidence that fraud and safety scandals involving these products have recently hit the headlines (e.g. meat unfit for human consumption, eggs tainted with Fipronil and infant formula contaminated with Salmonella).

Poland

Poland is one of the EU's top beef producers and the country exports most of its annual production. Following a television investigation broadcast in early 2019 that documented practices of slaughtering sick cows (either unable to stand or injured), Polish authorities alerted EU authorities that meat unfit for human consumption had been delivered to 15 Member States. The EU Commission subsequently undertook a special audit in Poland[32] that found "serious shortcomings in the implementation of [...] official controls in the allegedly implicated slaughterhouse".

A key finding from this audit was that staffing and resource issues were an important factor in limiting the effective organisation and implementation of official controls. Local veterinary authorities reported "a significant staff shortage" in terms of employees involved in official food safety controls. They stated that

the numbers of such staff "dropped in 2017 by 109 to 500, while for the same year the number of official veterinarians diminished by 114 to 358".

Unsurprisingly, these staff cuts for food safety controllers and official veterinarians (18% and 24% respectively in just one year) resulted in staff reporting that it was "extremely hard" to meet their control obligations. The competent authorities further highlighted that the official control system is underfunded, resulting in different levels of performance of the services in different areas of the country.

Belgium

In 2017, eggs produced in Belgium and the Netherlands were found to be contaminated with Fipronil, an insecticide banned from use in the production of foods of animal origin in the EU. Following the scandal, Belgian consumer organisation Test Achats/Test Aankoop

In just one year, the number of Polish food safety controllers dropped by 18% and official vets by 24%.

highlighted the impact that budget cuts have had on the total number of official controls carried out in the country.[33] They warned that such cuts, and the subsequent reduction in the number of controls, could eventually lead to further food crises.[34]

A year later, another food scandal in the country underlined yet again the importance of funding a well-functioning food controls regime. This time, a meat producing company representing 30% of the Belgian meat market and supplying major supermarkets was found to have falsified labels and sold meat unfit for human consumption. The discovery of these infractions was triggered by a complaint made by an individual wholesale customer unsatisfied with the quality of the meat product, rather than the result of controls undertaken by FASFC, the Belgian food agency.

That same month, the Belgian Agricultural Ministry announced that the budget for FASFC would be increased by 2 million euros. While Test Achats/Test Aankoop welcomed the news, they pointed out that this boost of funds only accounts for 10% of the total budget cuts to which the agency has been subjected (€20 million since 2014).

Ireland

There has been a steady decrease in the number of full-time staff carrying out inspections on meat, milk, and egg and poultry processors at Ireland's Department of Agriculture, Food and the Marine. The number of inspectors went down by a considerable 28% between 2012 and 2016 (from 445 to 319).[35] While the overall number of staff working in official controls across all other government agencies has decreased over the same period by 10%, this department has clearly seen the most dramatic reductions.

A 2014 evaluation of the official food control inspection system in Ireland, commissioned by the country's food safety authority, also highlighted the common challenges faced by Ireland's food safety agencies regarding resource constraints and stretched capacity.[36] As part of this evaluation, employees were asked their opinion on resources and staffing. When asked if they thought that the number of inspectors involved in food inspections in Ireland was appropriately aligned to risks across the food chain, less than a third (32%) responded positively. Sixty percent of those questioned believed that there were too few staff in their agency for the volume of work required.

Specifically, regarding the Department of Agriculture, Food and the Marine, the evaluation found that it had an older workforce, with many staff nearing retirement age, and highlighted concerns in some control areas about maintaining adequate capacity. To compensate for staff shortages, the Department reportedly contracted retired staff for the supervision of slaughterhouses.

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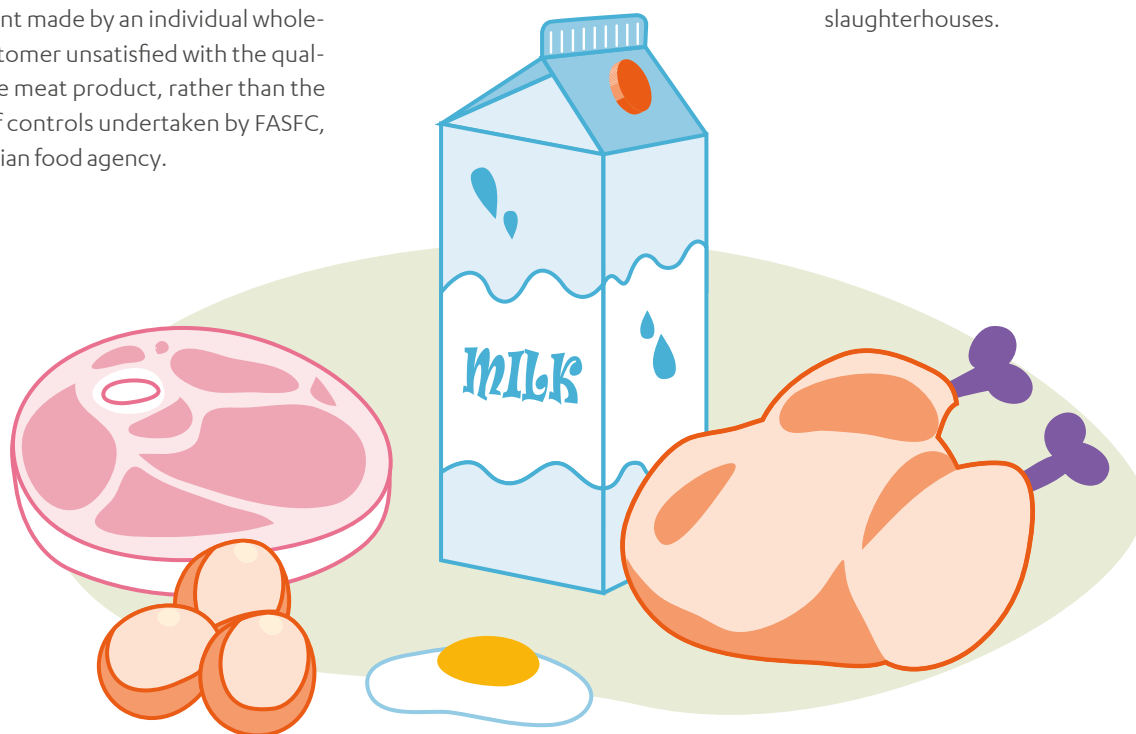
32 | Final Report of an audit carried out in Poland from 4-8 February 2019 in order to assess the operation of official controls on the production of bovine meat, April 2019.

33 | Between 2011 and 2016, the budget for FASFC decreased by 11% (while government subsidies, which are part of FASFC's budget, dropped by 18%) with a corresponding fall of 8.5% in the number of official controls.

34 | Test Achats, 'Œufs au Fipronil : le double discours du gouvernement', 9 August 2017.

35 | 'Annual Report on Ireland's national control plan for the period 1 January 2016 to 31 December 2016'.

36 | 'Evaluation of the Official Food Control Inspection System in Ireland', Final Report to the Food Safety Authority, December 2014.

UK

In September 2017, following an under-cover media investigation, serious concerns were raised about operations at a factory owned by one of the UK's largest poultry processors, a company that produces a total of 6 million chickens per week. Secretly recorded footage of operations in the plant showed that food safety records were being tampered with through the falsification of use-by labels.

A November 2017 parliamentary inquiry gathered evidence from representatives of the plant, the local council and the Food Standards Agency.[37] The ensuing report highlighted that the council responsible for inspecting this factory accepted that "perhaps we did not know this company as well as we thought we did", and that the frequency of inspection was too low. The factory in question had previously been inspected in March 2017, a full six months before the story broke.

The report concluded that it was essential that more funding be prioritised for the National Food Crime Unit in order to allow food law enforcers to adequately investigate potentially problematic practices in food-producing businesses.

Only months later, another food scandal involving one of the country's major meat suppliers further underlined serious problems of non-compliance. This led the Food Standards Agency to halt production at all of the company's plants and to implement a voluntary recall of all affected products. Despite the fact that the company counted some of the UK's largest restaurant chains, schools and hospitals amongst its clients, it had been a year since its last inspection by authorities. As a result of these incidents, the Food Standards Agency and Food Standards Scotland undertook a review of controls on meat cutting plants and cold stores;[38] this resulted in a series of recommendations to help ensure a more coherent and consistent approach.

France

At the end of 2017, Lactalis – one of the world's largest dairy groups – was embroiled in a food safety scandal when it was discovered that the French company had sold Salmonella-tainted baby milk. As a result, dozens of babies fell ill. A total of 83 countries were involved in the recall of 12 million boxes of affected powdered baby milk.

The French Senate produced a report following this scandal, which included recommendations on how the situation could be improved.[39] Highlighting the limitations of industry own checks in France, they recommended an increase in the resources dedicated to official inspections and their frequency.

The report highlighted that "the confidence of consumers with regard to food safety of products they purchase relies, in large part, on the independence of controls undertaken by the authorities". Nevertheless, as the report underlined, the continued cuts to food control budgets was at the origin of certain weaknesses in the food safety system. From 2010 to 2015, spending for food controls was slashed by 75 million euros, representing a reduction of 13%, while the number of employees diminished by 9.3% from 2009 to 2016.

Greece

The significant impact of the afore-mentioned reductions in resources and staff is clear when one looks at the substantial reductions in food safety checks performed in the area of foods of animal origin in Greece. Checks on meat production and cutting establishments dropped from 3,416 in 2008[40] to just 754 controls in 2017[41] – almost one fifth of the number of controls that were conducted a decade earlier. Unsurprisingly, the annual frequency of inspections of these meat businesses fell from 7.2 per year to just 0.66.

37 | House of Commons Environment, Food and Rural Affairs Committee, '12 Sisters and Standards in Poultry Processing: First Report of Session 2017-2019', 5 November 2017.

38 | Food Standards Agency and Food Standards Scotland, 'A Review of Meat Cutting Plants and Cold Stores', October 2018.

39 | 'Après l'affaire Lactalis : mieux contrôler, informer et sanctionner', Rapport d'Information, 5 April 2018.

40 | Ministry of Rural Development and Food of the Hellenic Republic, 2008.

41 | Ministry of Rural Development and Food of the Hellenic Republic, Annual Report 2017, MANCP 2015-2019.

4

'Risk-based' should not equate to patchy oversight

In brief: The greater the risk, the more controls are needed. But risk is sometimes underestimated.

Ineffective risk-based planning

The EU regulation says that the official control systems developed by Member States should include risk-based planning. In practice this means that when organising the performance and planning the frequency of official controls, Member States should prioritise checks on food business operators according to risk. Risk can be determined based on for example the type of operator, the size of the business, the past record of an operator in complying with food law, as well as the risk to health or the likelihood that consumers might be misled.

In the context of resource reductions across Europe, it makes sense to focus limited inspection resources for official controls in a more effective way. However, there are signs that some authorities do not interpret risk in a consistent manner.

In 2018, the European Court of Auditors published a special report on the implementation of animal welfare protection in the EU.[42] It found that in two of the five Member States they visited, certain types of small farms were excluded from official inspections although they represented a large share of the livestock sector (e.g. 85% of pig farms and 86% of cattle farms in Sardinia, Italy; 45% of the pig sector in Romania).

While the authors of the report accepted that in the context of limited inspection resources it is reasonable to prioritise checks on larger farms, authorities had not considered the risk that non-compliance at smaller farms could increase if they were completely excluded from inspections.

In the UK, food inspection frequency is based on an assessment of the risk on the premises, which takes into account previous performance. Operators who have achieved a favourable inspection 'score' on their compliance with food safety and standards rules are assessed as needing less frequent official controls. This makes sense. However, companies that have previously been found to be

non-compliant, or that present higher risk for other reasons, should be subject to an increased rate of inspection. Nonetheless, even for establishments classified as lower risk, it is still important that planned inspections are subject to official oversight. Monitoring by the Food Standards Agency shows however that local authorities responsible for official controls are struggling to keep on top of their scheduled risk-based inspections, especially in some parts of the country. In 2016-2017, only 44.2% of due interventions for food standards were achieved across the different categories of establishment risk.[43]

Misleading food labels fly under the radar

BEUC's 2018 report 'Food Labels: Tricks of the Trade'[44] identified several common misleading marketing tactics used by the food industry in their product labelling. Such tricks included using quality descriptions such as 'artisanal' or 'traditional' on industrial products; fruit images on products with very low or no fruit content; and wholegrain claims on products with low wholegrain content or products also high in fats, salt or sugar.

In response to the publication of the report, the European Commissioner for Health & Food Safety, Vytenis Andriukaitis, wrote to EU ministers to stress that national governments should "strengthen their national enforcement activities on the labelling practices followed by food businesses".[45] He recommended that "misleading labelling practices would merit further attention in [...] national control activities".

Although labelling compliance may not initially seem as pressing as other official control obligations, the checks that uncovered the horsemeat scandal in 2013 were part of the Irish Food Safety Authority's annual programme of labelling and content claims verification.

Nevertheless, as can be seen from several countries' reporting on such controls, **labelling is one of the most neglected areas of food law enforcement.** For example, in the Netherlands, the activities of the Food and Consumer Product Safety Authority in the area of food labelling (listed under the heading 'Know what you're buying') were reported as "limited due to budget cuts" for the years 2013-2015, with only "small supervision projects" being run.[46] The number of food labelling-related supervision projects appears to have risen in 2016-2017, although the increase in activity cannot be quantified based on the available data.

When controls are undertaken on food labels, it often turns out to be an area with a high rate of non-compliance. In the UK, for example, of the total labelling checks undertaken in 2017,[47] a staggering 89% of checks revealed non-compliances. The percentage of non-compliant labels in 2015 and 2016 were 51% and 76% respectively. Even if, as the authorities said, the products targeted for checks were chosen because of their higher risk and the corresponding increased likelihood of finding instances of non-compliance, the fact that only one in ten products tested in 2017 complied with labelling rules remains concerning.

Yet we can see that the number of official samples in the UK checked for compliance with labelling and presentation rules has been drastically reduced over the past ten years, from 21,343 checks[48] in this category in 2008-2009 to just 6,233[49] in 2016-2017. This amounts to a drop of over 70% in under a decade.

In France, a catering establishment is monitored on average every 15 years by state services. One inspector is on average responsible for controlling 3,284 establishments.

Number of Labelling Sample Checks in the UK (2008-2017)
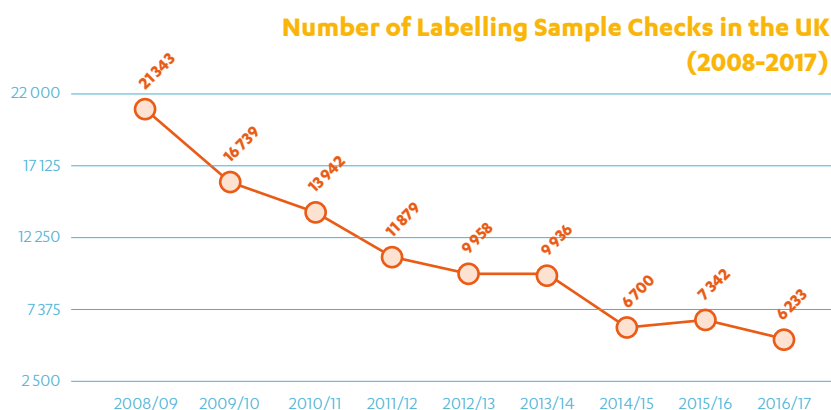
42 | European Court of Auditors, 'Animal welfare in the EU: closing the gap between ambitious goals and practical implementation', November 2018.

43 | UK Food Standards Agency, 'Annual report on local authority food law enforcement', 2016-2017.

44 | BEUC, 'Food Labels: Tricks of the Trade, Our recipe for honest labels in the EU', June 2018.

45 | See letter in this tweet by the Commissioner.

46 | Annual reports for the Netherlands are available here.

47 | To ensure conformity with the mandatory requirements of the Food Information to Consumers Regulation (1169/2011).

48 | FSA Annual report on UK local authority food law enforcement 1 April 2008 to 31 March 2009.

49 | FSA Annual report on UK local authority food law enforcement 1 April 2016 to 31 March 2017.

Eating out: a hygiene lottery?

Food hygiene in hospitality establishments such as cafés, restaurants and bars is an important source of risk for food-borne diseases. Nevertheless, **in many EU countries, the number of checks of food establishments has dropped, often by significant numbers.**

In the Netherlands for example, in the space of ten years, the number of inspections undertaken in the hospitality, catering and retail sector dramatically decreased from 61,657 inspections in 2008 to less than half that figure with just 29,818 inspections in 2017. The Dutch authorities have justified such a reduction in the number of checks by a more 'risk-based' approach. They also appear to rely more on private body inspection systems, with eight such systems approved in 2017.

In a report published earlier this year by the French Court of Auditors, a full chapter was dedicated to controls on food safety and hygiene.[50] It found that a catering establishment in France is monitored on average every fifteen years by state services. This concerning state of affairs was reinforced by French senators following the Lactalis baby milk scandal of 2017 in a report that highlighted that in France, one inspector is on average responsible for controlling 3,284 establishments (including restaurants, food shops and retail establishments).[51]

In the UK, the largest category amongst the number of registered food establishments is by far the restaurant and catering sector (making up around 75% of total registered food businesses). When any food establishment – including restaurants and bars – opens, it should be visited by food inspectors within 28 days. However, in 2016-2017, more than 1 of 5 food establishments in a significant 21% of local authorities were still awaiting their first inspection according to the UK report.[52]

In the Netherlands, the number of restaurant checks has dropped by more than half in less than 10 years.

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50 | Cour des Comptes, 'Le contrôle de la sécurité sanitaire de l'alimentation : des progrès à consolider', Rapport Public Annuel, February 2019.

51 | Sophie Primas et Alain Milon, French Senate, 'Rapport d'information fait au nom de la commission des affaires économiques et de la commission des affaires sociales sur les procédures de retrait et de rappel des produits alimentaires présentant un risque sanitaire', 2018.

52 | Annual report on UK local authority food law enforcement. 1 April 2016 to 31 March 2017. Food Standards Agency (2017).
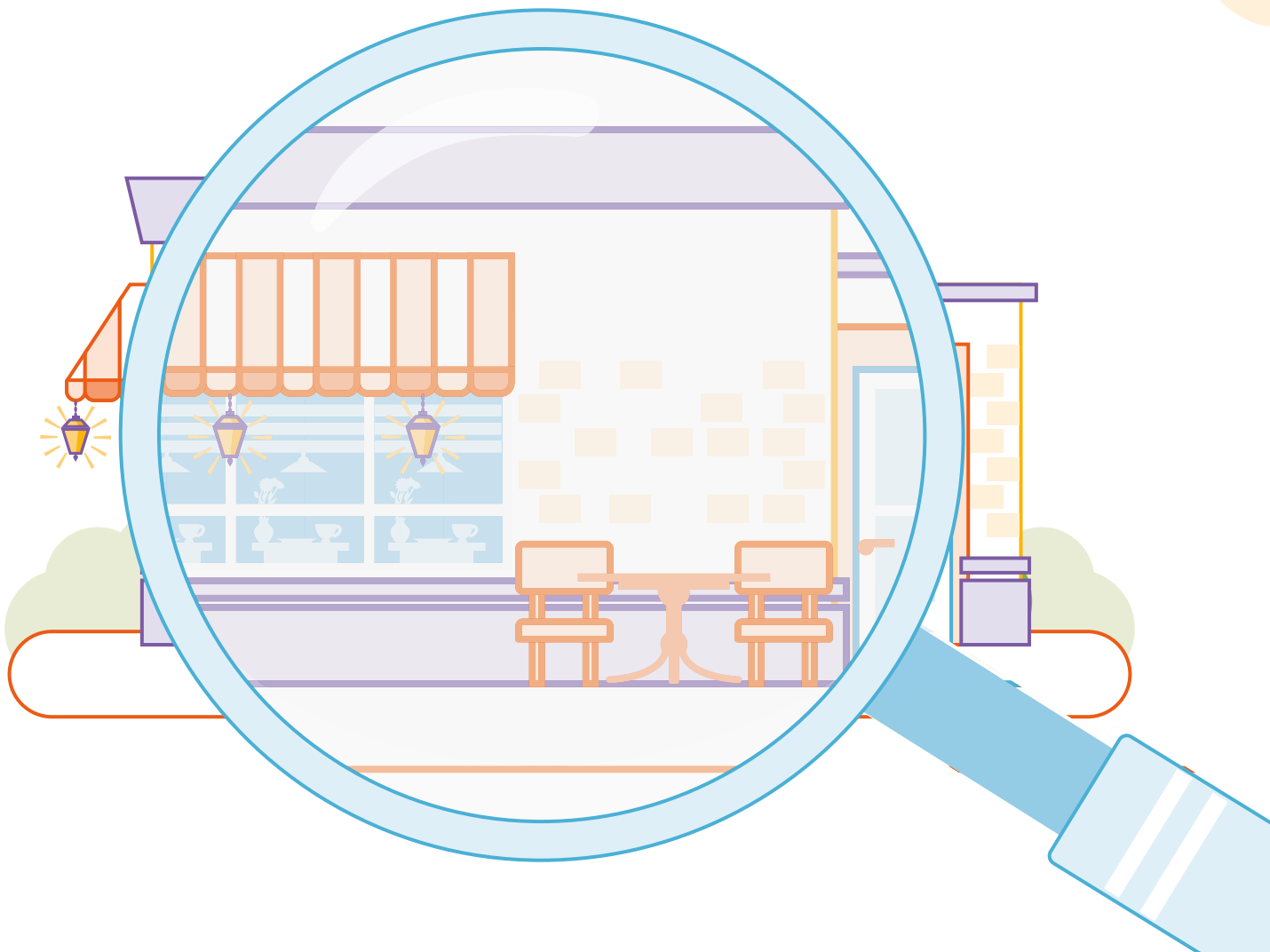
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Transparency of official control results for consumers

In brief: Only some Member States have developed tools to publish the results of food business inspections and to inform consumers about hygiene standards in restaurants and food shops.
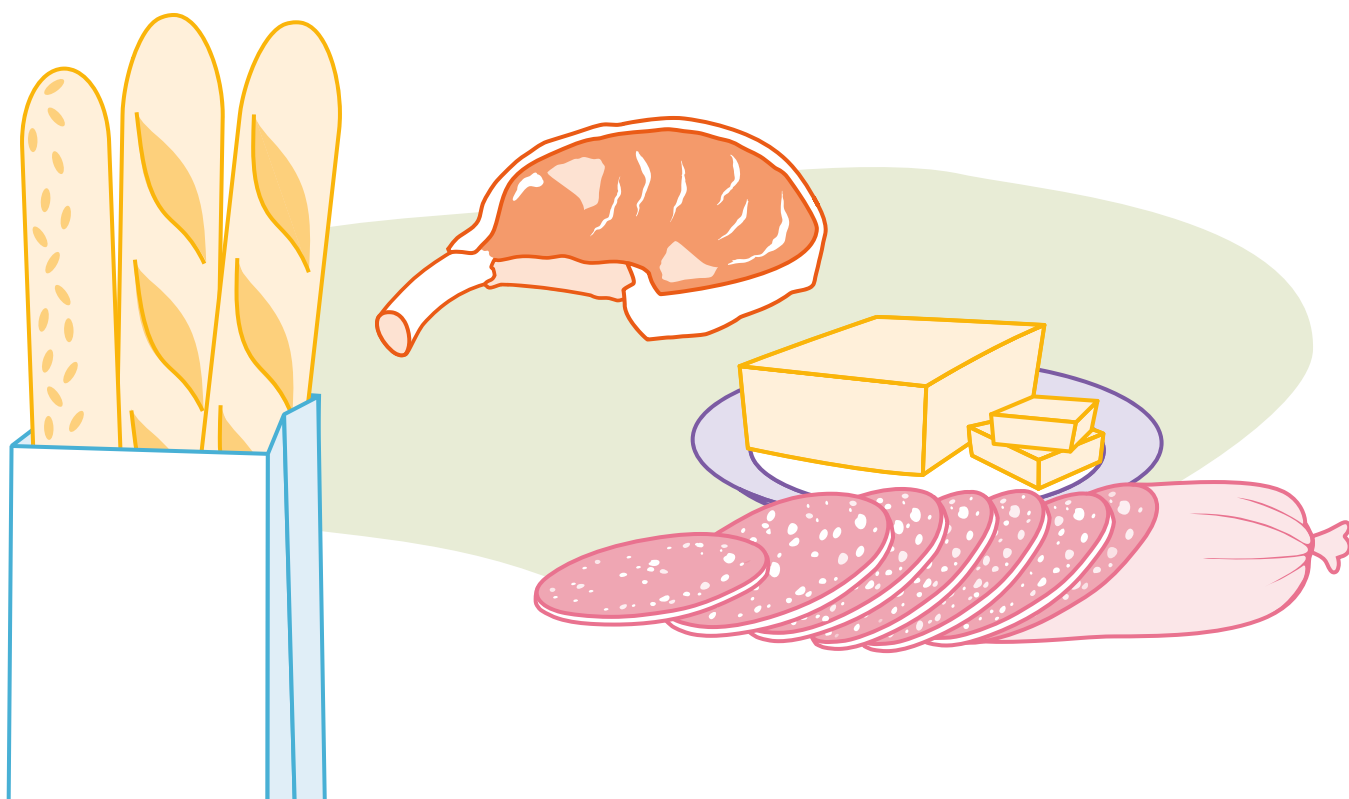
Although regrettably not a requisite of European food law,[53] certain Member States have made commendable efforts to improve the transparency of official control results for consumers in certain sectors. Some regions and countries communicate the results of inspections of consumer-facing food businesses to the public with food ratings displayed in a prominent place, e.g. the front door or window.

Providing 'scores on the doors' permits more informed choice by letting consumers see the food hygiene rating at a glance before entering a restaurant, café or bakery. Provided that it is based on sufficiently frequent controls, this can be useful information for consumers.

In the UK, it has been compulsory for these scores to be displayed on site in both Wales (since 2013) and Northern Ireland (since 2016). However, in England and Scotland, while the assessment outcomes are available online, it is up to the food business itself to decide whether to display the rating or not. Unsurprisingly, the number of restaurants displaying the ratings on their doors is much higher in Wales and Northern Ireland (84% and 82% respectively) than in England (49%).[54]

Not only do such schemes reward restaurants and cafés that have made the effort to comply with food standards, but they can have tangible effects in that they encourage businesses to improve their practices. For example, the proportion of food businesses in Wales with a rating of 5 (the best score) was 45.2% in 2013 compared with 65.1% in 2017.[55]

Denmark and Norway have had a similar system in place since 2001[56] and 2016[57] respectively, using 'smileys' to inform consumers about the standard of hygiene in shops, restaurants and other businesses selling food and beverages to the public.

In Belgium, results of food inspections are available via a website ('Foodweb').

However, as deplored by Test Achats/Test Aankoop,[59] the tool is not easily searchable by consumers and businesses are not required to display their ratings on their premises.

While such schemes can prompt food businesses to improve their practices in order to achieve better scores, Member State authorities should also have other concrete and effective deterrents at their disposal, such as financial sanctions. However, Member States' approaches to penalties can vary significantly. For example, following an access to documents request, a journalist revealed that the fines applied by different countries in the case of a breach of the Novel Foods Regulation varied hugely.[60] Companies selling unauthorised 'novel foods' made from insects or algae could be fined between €1,000 and €500,000 in Slovakia; €2,329 in Malta; and €1,050 in the Netherlands (if the company had more than 50 employees; otherwise the Dutch fine was €525).

53 | The new Official Controls Regulation (2017/625) that will apply as of 14 December 2019 fails to oblige Member States to publish the results of inspections of individual operators.

54 | BMG Research, 'Display of food hygiene ratings in England Northern Ireland and Wales', April 2018.

55 | UK Food Standards Agency, 'Food Hygiene Rating Scheme: A Report for the National Assembly of Wales. Review of the Implementation and Operation of the Statutory Food Hygiene Rating Scheme and the Operation of the Appeals System in Wales', February 2018.

56 | https://www.foedevarestyrelsen.dk/Kontrol/Smiley/Sider/Smiley-ordningen.aspx

57 | Guidelines to Smiley inspections from The Norwegian Food Safety Authority

58 | https://www.foodweb.be/portal/

59 | Test Achats, communiqué de presse « Les résultats des contrôles alimentaires enfin publics », June 2015.

60 | https://www.asktheeu.org/en/request/penalties_notification_regulation

6 Recommendations

The various reports and audits describing the implementation of official food controls in EU Member States paint a concerning picture of how the competent authorities are ensuring that the food on consumers' plates is safe as well as what it says on the label.

The new Official Controls Regulation, which will apply from 14th December 2019, will bring about welcome improvements in terms of how Member States should report on their food control activities. **However, more needs to be done** for a truly effective, dissuasive and transparent system of official controls.

Member State reporting must be reliable, consistent and comparable across EU countries.

BEUC welcomes the fact that the new legislation on official controls will introduce standard model forms, obliging Member States to present information and data on their annual official controls in a harmonised manner. This should enable an easier assessment of the differences between countries. Moreover, although not an explicit requirement of the new law, Member States should be encouraged to keep annual reports online for several consecutive years. This will allow the examination of trends within one country over several years – which is not always feasible today.

The European Commission should centralise annual reports.

A dedicated webpage hosting copies of Member States' reports would allow for direct and easy access. Some Member States (e.g. the Netherlands and Austria) produce English translations of their reports; this is a practice that could be further encouraged (and possibly supported by the European Commission) in order to permit the widest possible access to the wealth of data contained in these reports.
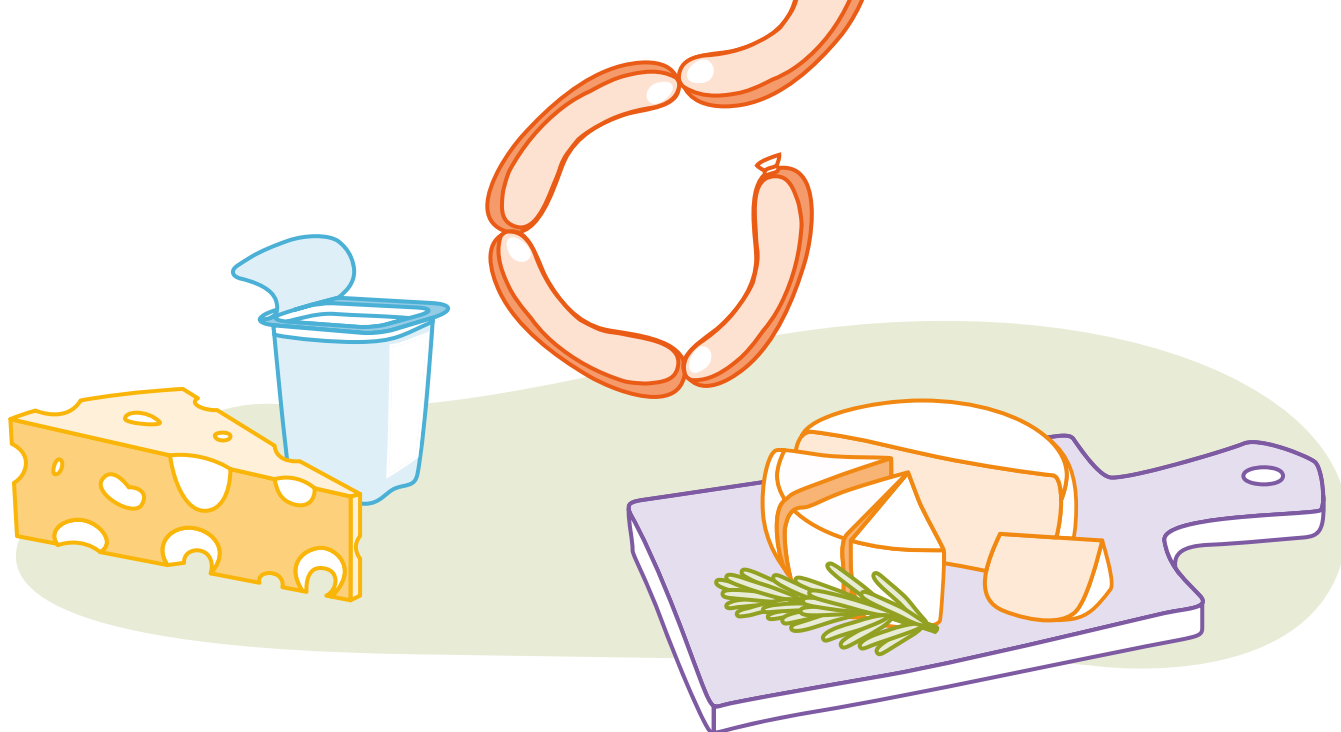
The amount of resources allocated to food controls must mirror the enforcement needs.

At some point, it may be necessary to reconsider charging mandatory fees on all types of food businesses to finance official controls. This was originally proposed by the European Commission during the 2013 review of the official controls legislation yet discarded by the European Council and Parliament. Another option to explore is the earmarking of financial penalties gained from food law breaches (see below) for the financing of official controls.

Penalties must be dissuasive enough to incentivise compliance.

We welcome the fact that the new official controls legislation will require Member States to impose "effective, proportionate and dissuasive" penalties in case of infringements to food regulations. In the case of fraud, the sanction will need to reflect the economic advantage sought by the fraudster (or a percentage of this operator's turnover). Member States will also have to notify the Commission of these penalties. To ease cross-country comparisons and best practice identification, BEUC calls on the Commission to publish (e.g. in a database) Member States' information about penalties applied on their territories. From the limited data that is available today, it is clear that the type and severity of sanctions for breaches of food law vary a lot across EU countries, raising doubts as to their effectiveness.

Official controls must cover *all* parts of food law.

The risk-based approach to food controls ensures an efficient use of resources. Yet, Member States must be able to ensure that *all* areas of food law (including labelling) are adequately enforced. They should be required to further detail the risk analysis – including the supporting evidence – that lead them to prioritise (or not) certain areas. Hard-earned consumer trust in the food they buy can be rapidly damaged by failures to enforce laws. Even where food safety is not at stake, food scandals can undermine consumer confidence in the generally high standards required of food business operators in the EU.

Transparency of official control results must be improved.

In order to gain and maintain consumer confidence, the reports or outcomes of controls regarding individual food operators should be made public by national control authorities. This would inform consumers about how a food business is faring and help them choose where to eat out or shop or decide what food products to buy. It would also incentivise food operators to perform well in order to achieve positive ratings. To date, few countries publish the results of checks carried out on individual food business operators. The new Official Controls Regulation encourages – but does not require – national authorities to publish ratings of individual operators under certain conditions (including objective rating criteria, fairness of the system, etc.).
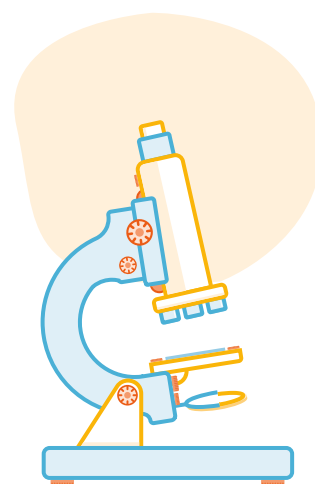
Annex
Who ensures that consumers' food is safe and correctly labelled?

In brief: Those dealing closely with our food must make sure that it complies with all safety and labelling requirements. The role of Member States is to check that this happens, whilst the Commission must ensure that EU countries have well-functioning food control systems in place.

While the primary legal responsibility for complying with food and feed laws lies with food business operators, Member States have a critical role in enforcing EU legislation. In turn, services of the European Commission have an essential duty to ensure that Member States' official controls are carried out in accordance with EU requirements through audits of national systems of food checks.

During these audits, experts from the Commission are sent to visit the control authorities of a Member State, regional authorities and laboratories. Commission experts also accompany site visits to food business operators such as farms or slaughterhouses. Such experts also carry out audits in non-EU countries exporting to the EU to ensure that these countries' systems comply with EU law.[61]

Reports resulting from these audits provide recommendations, where necessary, for improvements to be made in the country in question. For example, a recent audit report on the production of horsemeat in Argentina for export to the EU identified several deficiencies in the official controls system for this area and made several recommendations for improvements.[62]

The Commission may also undertake fact-finding missions in more than one Member State to produce an overview report that gives a broader perspective on how official controls are conducted across EU countries. For example, the Commission produced an overview report in 2016 on how six Member States were implementing official controls on food additives and smoke flavourings.[63] It found that most countries gave this area low priority, meaning that insufficient assurances were given that food business operators comply with EU requirements.

The current Official Controls Regulation (882/2004)[64] was passed with the intention of ensuring that the various EU food and feed safety requirements were being respected across the Single Market. It states that EU Member States should ensure that official checks are carried out regularly, on a risk basis – meaning the greater the risk, the more controls needed. The frequency of checks should be appropriate to achieve the provision of safe and wholesome food and feed, at all stages of the food chain.

Furthermore, the regulation stresses that "adequate financial resources should be available for organising official controls" and "[Member State authorities] should have a sufficient number of suitably qualified and experienced staff and possess adequate facilities and equipment to carry out their duties properly".

61 | Health and Food Audits and Analysis, European Commission website.

62 | Final Report of an audit carried out in Argentina from 28 November to 7 December 2018, in order to evaluate the control system in place governing the production of foods of animal origin (horsemeat) intended for export to the European Union.

63 | Overview report – Official control of food additives and smoke flavourings.

64 | Regulation 882/2004 was recently revised in 2017 and the new Official Controls Regulation (EU) 2017/625 will apply as of 14 December 2019.