The European Commission Proposal to Simplify, Rationalise and Standardise Food Controls

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The European Commission proposal to simplify, rationalise and standardise food controls: Towards a new concept of ‘food law’ in the EU?

Luis González Vaqué

«If we value the pursuit of knowledge, we must be free to follow wherever that search may lead us»

Adlai E. Stevenson Jr. (1900 – 1965)

I. Introduction

There is no doubt that ensuring a high level of health for humans is a leading objective of the European Union (EU): This was set by the Treaty; it has been declared unequivocally by the Community legislator and repeatedly confirmed by the EU Court of Justice (ECJ)\(^2\). In the last thirty years we have seen how EU legislation, which either directly or indirectly regulates food has gradually increased, becoming a complex and heterogeneous system of regulations that are not always easy to identify and understand\(^3\). This is recognised in the “Introduction” of the Communication from the Commission to the Council and the European Parliament titled “Healthier Animals and Plants and a Safer Agri-Food Chain - A modernised legal framework for a more competitive EU”\(^4\) when highlighting that, throughout the years, the EU has gradually drawn up an exhaustive legislation with the aim of preventing and managing the risks for animal and plant health, and for the food chain on national and EU levels: «the law in these policy areas is enforced by means of a common set of rules on official controls to be carried out by the competent authorities in the EU Member States».

In this context, based on the experience accumulated with regard to EU Law in this area, the Commission estimates that it is necessary to simplify and update the instruments available as well as to apply a more inclusive approach between the different areas. And, therefore, «… to foster the productivity, smooth functioning and accessibility of the internal market and to reinforce the EU’s competitiveness on a global scale»\(^5\), the Commission has presented four legislative proposals in the four areas of animal health, plant health, plant reproductive material and official controls (the ‘review package’\(^6\)).

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1 E-mail address: gonzalu20@live.com [translation: E. M. Porrera].


3 This is, for example, the opinion of Vírreyes Pérez, C. (See by this author: “UE: legislar mal, peor y… con una pésima técnica jurídica”, Gaceta del InDeAl, Vol. 15, Nº 2, 2013, 4-5).


5 See the “Introduction” of the General communication mentioned in the above note.

6 The review package also includes a fifth proposal establishing a multiannual programme for EU financing of actions aimed at ensuring a high level of health for humans, animals and plants along the agri-food chain and in related areas while allowing businesses to operate in an environment that favours competitiveness and job creation (See also the “Introduction” of the General communication).
This article, after a succinct review of the contents and objectives of the above-mentioned ‘review package’, will deal specifically with the Proposal of Official controls Regulation\(^7\) which paradoxically are supposed to simplify the current legislation, we will focus especially on the analysis of the object and scope of the future Regulation as well as the new and not so new definitions that are introduced. We will not forget to offer another succinct summary of the corresponding objectives and express our opinion about the legal base chosen by the Commission. We shall also examine briefly the configuration of proposed the text.

II. The need to modernise the legal framework of the EU with regard to animals, plants and the agri-food chain

1. Animal health

Taking into account that the current legislative framework applicable to animal health is composed of around fifty directives and basic regulations, some of which were adopted in the early 1960s and «since then a body of over 400 veterinary acts — most of them drawn up between 1988 and 1995 for a Community of only 12 Member States — has been built up»\(^9\), the Commission has included in the ‘review package’ a “Proposal for a Regulation of the European Parliament and of the Council on Animal Health”\(^10\).

The analysis of this Proposal will be left for another occasion. However we will take into account that the main objective of the Proposal on Animal Health is to establish a single regulatory framework, simplified, transparent and clear, which:

- systematically establishes the objectives, scope of application and the principles of the regulatory intervention.
- is based on good governance and compliance with international regulations.
- is focused on long-term preventive measures, and
- is drawn up in collaboration with all the interested parties.

2. Protection of plants and materials for plant reproduction


\(^8\) With more than 160 articles and 84 recitals…

\(^9\) See section 2.1 of the General communication quoted in note 4.

In this area, the Commission will also promote a substantial reform of current Community regulations, for which purpose it has introduced in the aforementioned ‘review package’ the following Proposals:

- on a Regulation of the European Parliament and of the Council on the production and making available on the market of plant reproductive material\(^\text{11}\) (plant reproductive material law); and

- on a Regulation of the European Parliament and of the Council on protective measures against pests of plants\(^\text{12}\).

\textit{Brevitatis causae}, this article will not deal with these Proposals.

### 3. Official controls

Official controls are regulated by Regulation (EC) No. 882/2004\(^\text{13}\). Thanks to the audits carried out \textit{in situ} by European Commission experts, but also to the information provided by member States and interested parties about its implementation in daily practice, evidence has been collected with regard to that: «… evidence\(^\text{14}\) confirms that the main changes introduced by the 2004 Regulation to the way competent authorities organise and carry out official controls along the agri-food chain has laid the basis for a more integrated and horizontal, and thus more efficient, approach to enforcement.»\(^\text{15}\).

Nevertheless, a series of deficiencies have been detected that require additional improvements, particularly:

- the simplification of the overall legal framework, which currently suffers from the remaining fragmentation, overlaps and gaps, and therefore differences in interpretation and implementation at national level;

- a more consistent use of the ‘risk-based controls’ principle;

- a more systematic and consistent use of administrative cooperation tools and of computerised information systems; and

- the repeal of unnecessary administrative requirements.

With the aim of remedying these deficiencies, the Commission has drawn up a Proposal on Official controls Regulation \(^\text{16}\), which will be dealt with in the third section of this study.


\(^{14}\) Emphasis added by the author.

\(^{15}\) See section 2.4 of the \textit{General communication} mentioned in footnote 4.

\(^{16}\) See footnote 7.
4. Management of expenditure

In section 4.5 of the general Communication17, after declaring that the Commission emphasises that this target would allow the use of the agricultural reserves in certain circumstances, such as in response to a crisis.

III. The Official controls Regulation Proposal 18

1. Background

In section 1.1 of the Official Controls Regulation Proposal, the Commission insists that, with the aim of that EU citizens enjoy a high level of human, animal and plant health on the one hand, and guarantee the operation of the internal market on the other, the Union legislation already has a collection of harmonising regulations to prevent, eliminate or reduce the level of health risk for people, animals and plants that could occur in the «agri-food chain». In this context, we can highlight that the expression «agri-food chain» is used in a very wide sense and it covers all the processes, products and activities related to food, its production and its manipulation, and the regulations that (directly or indirectly, for example, by means of safety requirements for feed) guarantee they are safe and apt for human consumption19: «it also includes rules referred to as veterinary and phytosanitary legislation, which deal with risks to animal health and plant health in general, and rules on the identity, health and quality of plant reproductive material»20. In principle, this body of law regulates especially the sanitary risks in the strict sense21 (risks for the integrity of people, animals and plants, derived from pests, diseases, microbes, chemical pollutants and other dangers).

With the objective of achieving that member States will apply this wide-ranging collection of regulations in a harmonised manner in the whole of the EU, by means of the

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17 Quoted in note 4.
18 See footnote 7.
19 It is evident that the Commission refers especially to Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1). In fact, this Community regulation is applied «...to all stages of production, processing and distribution of food and feed» (article 3.1); in addition, said Regulation often refers to the food supply chain: recital No. 39 mentions «...the whole food and feed supply chains...», etc. Furthermore, the fourth recital of the new Regulation proposed by the Commission confirms that «the basic Union rules with regard to food and feed law are laid down in Regulation (EC) No. 178/2002...» stating that «in addition to those rules, more specific food and feed law covers different areas such as animal nutrition, including medicated feeding stuffs, food and feed hygiene, zoonoses, animal by-products, residues of veterinary medicinal products, contaminants, control and eradication of animal diseases with a human health impact, food and feed labelling, plant protection products, food and feed additives, vitamins, mineral salts, trace elements and other additives, food contact materials, quality and compositional requirements, drinking water, ionisation, novel foods and genetically modified organisms (GMOs)». About Regulation No. 178/2002, see: FOURGOUX JEANNIN, M., V., “La construcción europea de la autonomía del Derecho alimentario” en BOURGES, L., “Sociología y Derecho alimentarios”, Aranzadi, 2013, p. 76; GONZALEZ VAQUÉ, L., “Objetivo: la seguridad alimentaria en la Unión Europea (el Regulation (CE) n. 178/2002)”, Gaceta Jurídica de la UE, No. 223, 2003, 59-71; and HAGENMEYER, M., “Modern food safety requirements: according to EC Regulation No. 178/2002”, Zeitschrift für das gesamte Lebensmittelrecht, Vol. 29, No. 4, 2002, 443-459.
20 See also section 1.1 of the “Explanatory Memorandum” of the Official controls regulation proposal quoted in note 7.
21 There are very different opinions about the effectiveness of this legislation: while some authors consider that the “horse meat crisis” is an evident confirmation of the ineffectiveness of the traceability “From Farm to Fork”, a fundamental element of Regulation No. 178/2002, quoted in note 19 (see with regard to this: VIDRERAS PÉREZ, C., “Del hipódromo a la hamburguesa”, BoViAlCo, No. 1, 2013, 27-28), others consider that the rules are satisfactory –or even excessive– and what has happened is that the services of the Commission have not been able to (or did not want to) make member States correctly implement the Community regulations intended to guarantee a high level of food safety, animal health, animal wellbeing and plant health within the EU (see, for example: SHINDELLES, J. A., “Los dirigentes de la DG SANCO ¿se olvidaron de cómo se conjuga el verbo dimitir”, Gaceta del InDeAl, Vol. 15, No. 1, 2013, p. 28).
Regulation No. 882/2004\textsuperscript{22} a legislative framework for the organisation of official controls\textsuperscript{23} was established.

Nevertheless, once again, as has been accepted by the Commission\textsuperscript{24}, several deficiencies were detected in its wording and implementation. Thus, for example, in the report adopted by the Commission in December 2010 on the effectiveness and consistency of sanitary and phytosanitary controls on imports of food, feed, animals and plants\textsuperscript{25}, it was concluded not only that the wide-ranging body of legislation currently in force enables the EU to face emerging risks or emergency situations without causing distortions in trade, but it was also brought to light that the Union import control system could be more coherent, by means of the revision and consolidation of existing sectorial regulations relating to official controls.

For all these reasons, the Commission, after carrying out the opportune consultations with the interested parties and the analysis of the evaluations of impact (the details of which will be omitted here, as they can be consulted in section No. 2 of the “Explanatory Memorandum” of the Official Controls Regulation Proposal), decided to draw up the Regulation project object of our study.

2. Objectives

The general objectives of the revision coincide with those of the Treaty in order to protect the single market, and at the same time to guaranteeing a high level of protection of health. They also reflect what the Commission primarily tries to carry out: to allow an adequate application of EU regulations, which also constitutes the original objective of mentioned Regulation No. 882/2004.

More specifically, the Official Controls Regulation Proposal aims:

- to modernise and sharpen enforcement tools, and in particular official controls, as laid down in the existing Regulation;
- to simplify the legislative framework;
- «make it easier to use and more efficient (for example with regard to administrative cooperation)»\textsuperscript{26};
- «to align the framework of official controls, in particular the terminology used, to the modernised customs code»\textsuperscript{27}; and
- in short, to establish a single collection or regulations applicable to official controls in all sectors included in their scope of application.

\textsuperscript{22} See footnote 13.

\textsuperscript{23} Sic in section 1.1 of the “Explanatory Memorandum” of the Official controls regulation proposal.

\textsuperscript{24} In section 1.1 of the “Explanatory Memorandum” of the Official controls regulation proposal.


\textsuperscript{26} See section 1.2 of the “Explanatory Memorandum” of the Official controls regulation proposal.

\textsuperscript{27} Ibidem, section 1.4.
With regard to financing official controls, the Proposal aims to guarantee the availability of stable and adequate resources, to guarantee fairness and justice in funding the official controls, and to improve transparency.

According to the Commission, the Official Controls Regulation Proposal is in line with the objectives of the Communication on Smart Regulation in the EU. In addition, the Proposal is coherent with the legal revisions regarding animal health, the legislation on measures against plant pests and that referring to plant reproductive material (PRM), all of them object of the corresponding Proposals, which as we have already said, the Commission has adopted at the same time.

3. Legal basis

Regulation No. 882/2004 «... was based on Articles 37, 95 and 152(4)(b) of the EC Treaty, now Article 43, 114 and 168(4)(b) respectively of the TFEU».

If the new Regulation is finally adopted according to the proposal of the Commission, it will be based on articles 43.2, 114 and 168.4 (b) TFEU.

This choice is justified, in section No. 3 of the "Explanatory Memorandum" of the Official Controls Regulation Proposal, declaring the following:

«The Common Agricultural Policy (CAP), which is based on Article 43 of the TFEU, is qualified by the Lisbon Treaty as shared competence between the EU and its MS. However, the majority of agricultural activity, as well as ancillary activities upstream and downstream, have been regulated at the EU level. This means that legislation is predominantly a role for the institutions of the European Union. Article 114 provides the legal basis for the establishment and functioning of the internal market for food products while ensuring a high level of protection of consumers and the approximation of provisions laid down by the law, regulation or administrative actions in this respect. Article 168(4)(b) stipulates that in order to meet common safety concerns 'measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health' should be adopted by the EU.».

We suppose that the fact that these articles have been chosen as a legal basis for the proposed Regulation will please the authors who are in favour of the existence of a different Agri-food Law or, at least more unifying and complete, than Food Law. To choose between one notion or another has been (and still is) the object of one of these sterile controversies that are so popular with lawyers... For this reason, we are not going to fall into the temptation of highlighting that our choice is clearly favourable to keep the unambiguous concept of Food Law, nor will we criticise the Commission's choice. It will

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29 See section 3.1 of the “Explanatory Memorandum” of the Official controls regulation proposal.

30 Ibidem.


32 Which includes the agricultural as well as industrial aspects regarding all the stages of food production/consumption. On the other hand, we do not share the pertinent argument of MAYORAL JERRAVIDAS, A. suggesting that the specialists in
be sufficient to confirm that the scope of implementation of the future Regulation covers practically all the activities carried out in the food chain, including the “industrial” ones.

4. Framework

The text proposed by the Commission, which has a surprising length, is structured according to the following plan:

- TITLE I: SUBJECT MATTER, SCOPE AND DEFINITIONS (which will be dealt with in the following section of this study).

- TITLE II: OFFICIAL CONTROLS AND OTHER OFFICIAL ACTIVITIES IN MEMBER STATES (Competent authorities; Sampling, analysis, testing and diagnosis; Official controls on animals and goods entering the Union; Financing of official controls; and Official certification).

- TITLE III: REFERENCE LABORATORIES AND CENTRES

«As a consequence of the extension of scope of the [future] Regulation to new sectors (measures against pests of plants; rules governing the production, with a view of placing on the market, of plant reproductive material; animal by-products rules), it will be possible for the Commission to establish European Union reference laboratories (EURLs) in those sectors. The obligations for Member States to designate national reference laboratories (NRLs) for each EURL designated by the Commission will follow accordingly. It will also be possible for the Commission to designate European Union reference centres for the production and marketing of plant reproductive material and for animal welfare. These centres will in particular provide technical expertise, conduct training courses and contribute to the dissemination of research findings and technical innovations.»

- TITLE IV: ADMINISTRATIVE ASSISTANCE AND COOPERATION

«The administrative assistance and cooperation provisions of the Regulation will be reinforced and clarified so as to increase their usability and effectiveness as a tool for tackling cross-border non-compliances.»

- TITLE V: PLANNING AND REPORTING

«The Multi-annual national control plan (MANCP) will remain a document produced and owned by the MS which they will use to assist the competent authorities in ensuring the delivery of official controls in compliance with Union law.»

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Agrarian law, in the late 20th century, on seeing that this discipline was stripped of its content, managed to discover a new concept, that of the Agri-food law (see by the said author: “¿Derecho alimentario... o agroalimentario?”, Gaceta del InDeAl, Vol. 10, No. 1, 2008, 11-13)... despite coinciding with the reasoning in our article “Derecho agrario, Derecho alimentario...¿Derecho agroalimentario?”, published (in 1987?) in Revista de Derecho agrario y alimentario, No. 2, 3-11. Certainly –as Mayoral Jerравidas, A. (ibidem) rightly underlined-, the agrarian origin of this (innovative?) Agri-food law is evident when consulting works such as: Lorvellec, L., “Ecrits de droit rural et agroalimentaire”, Dalloz, 2002, 584 pp.; and Costato, L., “Du droit rural au droit agroalimentaire et au droit alimentaire”, paper presented in the 10 December 2008 session on the Académie d’Agriculture de France. As emphasised by Mayoral Jerравidas, A., it is difficult to imagine that a control in a factory of industrial food has anything to do with rurality... (ibidem).

33 See footnote 8.

34 See section No. 5 of the “Explanatory Memorandum” of the Official controls regulation proposal.

- TITLE VI: UNION ACTIVITIES

The provisions of this title will continue to govern a number of activities at Union level: controls by the Commission's Food and Veterinary Office (FVO); the procedures (clarified and streamlined\textsuperscript{38}) for the establishment of requirements for the entry of certain categories of goods from third countries into the Union; the organisation by the Commission of training for the staff of the competent authorities in the Member States and in third countries; etc.

- TITLE VII: ENFORCEMENT MEASURES

«Provisions governing national enforcement measures will be applicable to all the sectors of the scope of the [new] Regulation.

A new provision dealing specifically with actions to be taken in case of suspicion of non-compliance will be included, requiring competent authority to carry out investigations in order to confirm or to eliminate the suspicion or doubt.

The list of possible measures in case of established non-compliance will furthermore be completed: restriction or prohibition of movements of animals, imposition of quarantine periods, slaughter or killing of animals, postponement of slaughter of animals, isolation or closure of establishments, closure of websites will for instance be added to the list.

A new provision in former Article 55 (on sanctions for non-compliance) will require MS to ensure that financial penalties applicable to intentional infringements offset the economic advantage sought by the perpetrator of the violation. Member States will also be required to ensure the application of appropriate criminal and/or administrative penalties to operators who fail to cooperate during an official control.»\textsuperscript{39}

5. Subject matter and scope

In section No. 5 of the “Explanatory Memorandum” of the Official Controls Regulation Proposal, the Commission announces its intention to enlarge/modify the scope of application of the future Regulation (with regard to Regulation No. 882/2004\textsuperscript{40}, currently in force):

♦ to cover controls performed to verify compliance with the legislation concerning measures against pests of plants, rules governing the production, with a view of placing on the market, of plant reproductive material and rules on animal by-products; and

♦ to clarify that certain Articles of the Regulation also apply to official activities, other than official controls (these are activities of public interest entrusted to the authorities of the member States with the aim of eliminating, avoiding...

\textsuperscript{38} Sic in section No. 5 of “Explanatory Memorandum” of the Official controls regulation proposal [we can highlight that the French version also indicates that «le plan de contrôle national pluriannuel (PCNP) restera un document produit par l’EM, qui lui appartient… » (emphasis added by the author)].

\textsuperscript{37} See section No. 5 of the “Explanatory Memorandum” of the Official controls regulation proposal.

\textsuperscript{39} Ibidem.

\textsuperscript{40} Ibidem.
the progress or reducing risks for the health of human beings, animals or plants, or for animal welfare\textsuperscript{41}).

Reading article 1 of the text proposed for the Commission we can learn the extensiveness of its objective and scope:

« 1. This Regulation lays down rules for:

(a) the performance of official controls and other official activities performed by the competent authorities of the Member States;
(b) the financing of official controls;
(c) the administrative assistance and cooperation between Member States in view of the correct application of the rules referred to in paragraph 2;
(d) the performance of Commission controls in Member States and in third countries;
(e) the adoption of conditions to be met by animals and goods entering the Union from a third country;
(f) the establishment of a computerised information system to manage information and data in relation to official controls.

2. This Regulation shall apply to the official controls performed for the verification of compliance with the following rules, whether established at Union level or by the Member States to apply Union legislation in those areas:

(a) governing food and food safety, at any stage of production, the processing and distribution of food, including rules aimed at guaranteeing fair practices in trade and protecting consumer interests and information, and the manufacture and use of materials and articles intended to come into contact with food;
(b) governing the deliberate release into the environment and the contained use of GMOs;
(c) governing feed and feed safety, at all stages of production, processing and distribution of feed and the use of feed, including rules aimed at guaranteeing fair practices in trade and protecting consumer interests and information;
(d) laying down animal health requirements;
(e) aiming at preventing and minimising risks to human and animal health arising from animal by-products and derived products;
(f) laying down welfare requirements for animals;
(g) on protective measures against pests of plants;
(h) on the production, with a view to placing on the market, and placing on the market of plant reproductive material;
(i) laying down requirements for the placing on the market and use of plant protection products and the sustainable use of pesticides;
(j) governing organic production and labelling of organic products;
(k) on the use and labelling of protected designations of origin, protected geographical indications and traditional specialities guaranteed.

3. This Regulation shall also apply to official controls performed for the verification of compliance with requirements laid down in the rules referred to in paragraph 2 applicable to animals and goods:

(a) entering the Union from third countries;
(b) to be exported to third countries.

\textsuperscript{41} See section No. 5 of the “Explanatory Memorandum” of the Official controls regulation proposal, which details that «these activities, which notably include various modalities of surveying, surveillance and monitoring (including epidemiologic), and eradication, containment, and other diseases control tasks, are governed by the same sectoral rules which are enforced through the official controls». 
4. This Regulation shall not apply to official controls for the verification of compliance with:

(a) the rules laid down in Regulation (EC) No. 1234/2007\(^{42}\);
(b) the rules laid down in Directive 2010/63/EU of the European Parliament and of the Council of 22 September 2010 on the protection of animals used for scientific purposes\(^{43}\)

5. Articles 3, 4, 5, 7, 11(2) and (3), 14, 30 to 33, 36 to 41, 76, Titles III and IV, and Articles 129 and 136 of this Regulation shall also apply to other official activities performed by the competent authorities in accordance with this Regulation or with the rules referred to in paragraph 2 of this Article.

Certainly it would not be very useful to compare the provision in question with article 1 of Regulation No. 882/2004, which limited itself practically to referring to the official controls destined to eliminate or reduce risks for people and animals, as well as guaranteeing fair practices in feed and food trade and little more...

Neither will succumb to the temptation to analyse one by one the sections/points of the proposed provision. It will be sufficient to confirm that the scope of the future Regulation shall cover Community legislation «... on animal health...» (referred to in the fifth recital of the proposed regulation), «... on animal welfare...» (ibidem, sixth recital), «... on plant health [that] regulates the entry, establishment and spread of pests of plants that do not exist, or are not widely present, in the Union» (ibidem, seventh recital), «... on plant reproductive material ...» (ibidem, eighth recital), «... on organic production and labelling of organic products... » (ibidem, ninth recital), «... on agricultural quality schemes for agricultural products and foodstuffs... » (ibidem, tenth recital), referring to the «... Union agri-food chain [that] is based on the principle that operators at all stages of production, processing and distribution within the businesses under their control are responsible for ensuring that the requirements established by Union agri-food chain legislation and which are relevant to their activities are fulfilled.» (ibidem, recital No. 11), etc.

In short, as confirmed in Recital No. 17, the new «...Regulation should seek to establish a harmonised Union framework for the organisation of official controls, and official activities other than official controls, along the entire agri-food chain, taking into account the rules on official controls laid down in Regulation (EC) No. 882/2004 and in relevant sectoral legislation, and the experience gained from their application».

6. Definitions

With reference to existing definitions, it is interesting to mention that section No. 5 of the “Explanatory Memorandum” of the Official Controls Regulation Proposal let us know that they «... will be adjusted to give account of the broader scope of the Regulation in terms of sectors and activities covered by it». In this sense, new definitions are introduced, some by means of a cross reference to the sectorial regulations. And, as reiterated in

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recital No. 19 of the text proposed by the Commission, «certain definitions currently set out in Regulation (EC) No. 882/2004 should be adapted to take account of the broader scope of this Regulation, to align them with those set out in other Union acts, and to clarify or, where appropriate, replace terminology having different meanings in different sectors ». Some new definitions are also added, as made necessary by the object and scope of the future Regulation. In short, in article 2 the following definitions are included «for the purposes of this Regulation...»:

- 'official control': «... any form of control that the competent authorities perform for the verification of compliance with:

  (a) this Regulation;
  (b) the rules referred to in Article 1(2)» 44.

  [Fundamentally keeps the content of the definition included in Regulation No. 882/2004, adapting it to the new scope].

- 'other official activities': «... any activity, other than an official control 45, which is performed by competent authorities in accordance with:

  (a) this Regulation;
  (b) the rules referred to in Article 1(2) to ensure the application of those rules» 46.

- 'food law': «... food law as defined in point (1) of Article 3 of Regulation (EC) No. 178/2002» 48.

  [It cannot really be considered a new definition, because article 2 of Regulation No. 882/2004 already established that «for the purposes of this Regulation, the definitions laid down in Articles 2 and 3 of Regulation (EC) No. 178/2002 shall apply»].

- 'feed law': «... the laws, regulations and administrative provisions governing feed in general and feed safety in particular, whether at Union or national level; it covers all stages of production, processing and distribution of feed and the use of feed» 49.

  [This definition that is practically identical to the existing in Regulation No. 882/2004].

- 'competent authorities':

  «... (a) the central authorities of a Member State responsible for the organisation of official controls and of other official activities, in accordance with this Regulation and the rules referred to in Article 1(2);
  (b) any other authority to which that responsibility has been conferred;
  (c) where appropriate, the corresponding authorities of a third country» 50.

  [Again, it keeps fundamentally the same elements of the definition in Regulation No. 882/2004].

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44 Article 2(1) of the text proposed by the Commission.
45 Emphasis added by the author.
46 Article 2(2) of the text proposed by the Commission.
47 See footnote 19.
48 Article 2(3) of the text proposed by the Commission.
49 Ibidem, article 2(4).
50 Ibidem, article 2(5).
● 'animals': « animals as defined in point (1) of Article 4(1) of Regulation (EU) [on animal health] » 52.

● 'goods': «… any good subject to one or more of the rules referred to in Article 1(2), excluding animals » 53.

● 'food': «… food as defined in Article 2 of Regulation (EC) No. 178/2002 » 54.

[Remember again that article 2 of Regulation No. 882/2004, which established that «for the purposes of this Regulation, the definitions laid down in Articles 2 and 3 of Regulation (EC) No. 178/2002 shall apply».]

● 'feed': «…feed as defined in point (4) of Article 3 of Regulation (EC) No. 178/2002 » 55.

[Confirming once more the provisions of article 2 of Regulation No. 882/2004].

● 'animal by-products': «… means animal by-products as defined in point (1) of Article 3 of Regulation (EC) No. 1069/2009 » 56.

● 'derived products': «… derived products as defined in point (2) of Article 3 of Regulation (EC) No. 1069/2009 » 57.

● 'pests': «… pests as defined in Article 1(1) of Regulation (EU) [on protective measures against pests of plants] » 58.

● 'plants': «… plants as defined in point (1) of Article 2 of Regulation (EU) [on protective measures against pests of plants] » 59.

● 'plant reproductive material': «… plant reproductive material as defined in point (2) of Article 3 of Regulation (EU) [on the production and making available on the market of plant reproductive material] » 60.


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51 See footnote 10.
52 Article 2(6) of the text proposed by the Commission.
53 Ibidem, article 2(7).
54 Ibidem, article 2(8).
55 Ibidem, article 2(9).
57 Article 2(10) of the text proposed by the Commission.
58 Ibidem, article 2(11).
59 See footnote 12.
60 Article 2(12) of the text proposed by the Commission.
61 See footnote 12.
62 Article 2(13) of the text proposed by the Commission.
63 See footnote 11.
64 Article 2(14) of the text proposed by the Commission.
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- 'alien species': «... a species, subspecies or lower taxon, introduced outside its natural past or present distribution and includes any part, gametes, seeds, eggs, or propagules of such species, as well as any hybrids, varieties or breeds, that might survive and subsequently reproduce»67.

[See recital No. 22 and article 3.5 of the Official Controls Regulation Proposal].


- 'germinal products': «... means germinal products as defined in point (25) of Article 4(1) of Regulation (EU) [on animal health]70».71.

- 'plant products': «... plant products as defined in point (2) of Article 2 of Regulation (EU) [on protective measures against pests of plants]72,73.

- 'other objects': «... other objects as defined in point (4) of Article 2 of Regulation (EU) [on protective measures against pests of plants]74,75.

- 'risk assessment': «... risk assessment as defined in point (11) of Article 3 of Regulation (EC) No. 178/2002».76.

[Remember the provisions of article 2 of Regulation No. 882/2004, as well as the statement included in its recital No. 23: «In accordance with Article 50 of Regulation (EC) No. 178/2002, the Member States shall inform the Commission where information relating to the existence of a serious direct or indirect risk to human health deriving from food or feed is available»].

- 'certifying officer':

  «... (a) any official of the competent authorities authorised to sign official certificates by such authorities;
  (b) where provided for by the rules referred to in Article 1(2) – any other person, who is authorised to sign official certificates by the competent authorities»77.

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66 Article 2(15) of the text proposed by the Commission.
67 Ibidem, article 2(16).
69 Article 2(17) of the text proposed by the Commission.
70 See footnote 10.
71 Article 2(18) of the text proposed by the Commission.
72 See footnote 12.
73 Article 2(19) of the text proposed by the Commission.
74 See footnote 12.
75 Article 2(20) of the text proposed by the Commission.
76 Ibidem, article 2(21).
77 Ibidem, article 2(22).
‘official certificate’: «... any paper or electronic document\(^78\) signed by the certifying officer and providing assurance concerning compliance with one or more requirements laid down in the rules referred to in Article 1(2)\(^79\);

[See, infra, the definition of ‘official certification’ and compare it with that of article 2 (12) of Regulation No. 882/2004].

‘non-compliance’: «... non-compliance with:

(a) this Regulation;
(b) rules referred to in Article 1(2)\(^80\).

[Modifies the definition found in article 2(10) of Regulation No. 882/2004].

‘official attestation’: «... any label, mark or other form of attestation issued by the operators under the supervision, through dedicated official controls, of the competent authorities, or by the competent authorities themselves, and providing assurance concerning compliance with one or more requirements laid down in the rules referred to in Article 1(2)\(^81\).

‘operator’: «... any natural and legal person subject to one or more obligations provided for in the rules referred to in Article 1(2), except the competent authorities and the other bodies in charge of official controls and other official activities»\(^82\).

‘consignment’: «... a number of animals or quantity of goods of the same type, class, or description, covered by the same official certificate, official attestation or any other document, conveyed by the same means of transport and having the same origin»\(^83\).

‘inspection’: «... a form of official control involving the examination of:

(a) animals or goods;
(b) activities under the control of operators falling within the scope of the rules referred to in Article 1(2) and equipment, means of transport, substances and materials used to perform those activities;
(c) places where operators perform their activities»\(^84\).

[It changes the definition included in article 2(7) of Regulation No. 882/2004, extending the notion of ‘inspection’].

‘border control post’: «... a place, and the facilities belonging to it, designated by a Member State to perform the official controls provided for in Article 45(1)»\(^85\).

‘audit’: «... a systematic and independent examination to determine whether activities and the related results of such activities comply with planned arrangements

\(^{78}\) Emphasis added by the author.

\(^{79}\) Article 2(23) of the text proposed by the Commission.

\(^{80}\) Ibidem, article 2(24).

\(^{81}\) Ibidem, article 2(25).

\(^{82}\) Ibidem, article 2(26).

\(^{83}\) Ibidem, article 2(27).

\(^{84}\) Ibidem, article 2(28).

\(^{85}\) Ibidem, article 2(29).
and whether these arrangements are applied effectively and are suitable to achieve objectives»86.

[In principle, it keeps the definition in article 2(6) of Regulation No. 882/2004 although details about its new scope have been added]

- 'rating': «… a classification of operators based on an assessment of their conformity with rating criteria»87.

- 'official veterinarian': «… a veterinarian appointed by the competent authorities and appropriately qualified to perform the official controls and other official activities in accordance with:

  (a) this Regulation;
  (b) the rules referred to in Article 1(2)»88.

- 'hazard': «… any agent or condition with the potential to have an adverse effect on human, animal or plant health, animal welfare or the environment»89.

- 'specified risk material': «… tissues as defined in point (g) of Article 3(1) of Regulation (EC) No. 999/200190,91.

- 'long journey': «… a journey as defined in point (m) of Article 2 of Regulation (EC) No. 1/200592,93.

- 'exit point': «… a border control post or any other place designated by a Member State where animals, falling within the scope of Regulation (EC) No. 1/2005, leave the customs territory of the Union»94.

- 'pesticide application equipment': «… any apparatus as defined in point (4) of Article 3 of Directive 2009/128/EC95,96.

- 'delegated body': «… a third party, to which the competent authorities have delegated specific official control tasks»97.

[Compare with the definition of control body found in article 2(5) of Regulation No. 882/2004]

86 Ibidem, article 2(30).
87 Ibidem, article 2(31).
88 Ibidem, article 2(32).
89 Ibidem, article 2(33).
91 Article 2(34) of the text proposed by the Commission.
93 Article 2(35) of the text proposed by the Commission.
94 Ibidem, article 2(36).
96 Article 2(37) of the text proposed by the Commission.
97 Ibidem, article 2(38).
● 'control authority for organic products': «... a public administrative organisation of a Member State to which the competent authorities have conferred, in whole or in part, their competences in relation to the application of Regulation (EC) No. 834/2007, including, where appropriate, the corresponding authority of a third country or operating in a third country».

● 'control verification procedures': «... the arrangements put in place and actions performed by the competent authorities for the purpose of ensuring that official controls and other official activities are consistent and effective».

[This definition is not found in Regulation No. 882/2004, as it is only included in article 2(2) the notion of 'verification' that «means checking, by examination and the consideration of objective evidence, whether specified requirements have been fulfilled».

● 'screening': «... a form of official control performed by conducting a planned sequence of observations or measurements with a view to obtaining an overview of the state of compliance with this Regulation and the rules referred to in Article 1(2)».

● 'targeted screening': «... a form of official control involving observation of one or more operators or their activities».

● 'control system': «... a system comprising the competent authorities and the resources, structures, arrangements and procedures set up in a Member State to ensure that official controls are performed in accordance with this Regulation and with the rules provided for in Articles 15 to 24».

● 'equivalence' or 'equivalent': «...(a) the capability of different systems or measures to meet the same objectives; (b) different systems or measures capable of meeting the same objective».

[This definition is almost identical to the concept of 'equivalence' found in article 2(14) of Regulation No. 882/2004, although it is structured in two points...].

● 'entry into the Union': «... the action of bringing animals and goods into one of the territories listed in Annex I».

[Compare, to see the differences, with the definition of 'introduction' included in article 2(16) of Regulation No. 882/2004 (despite the fact that it is also structured in two points); see additionally the definition of 'import' in article 2(15) of the same Community regulation].

● 'documentary check' means the examination of the official certificates, official attestations and other document(s) including documents of a commercial nature,


99 Article 2(39) of the text proposed by the Commission.

100 Ibidem, article 2(40).

101 Ibidem, article 2(41).

102 Ibidem, article 2(42).

103 Ibidem, article 2(43).

104 Ibidem, article 2(44).

105 Ibidem, article 2(45).
which are required to accompany the consignment as provided for by the rules referred to in Article 1(2), Article 54(1), or by implementing acts adopted in accordance with Articles 75(3), 125(4), 127(1) and 128(1)\textsuperscript{106}.

[It amends the definition in article 2(17) of Regulation No. 882/2004 by adding different details].

- 'identity check': "... a visual inspection to verify that the content and the labelling of a consignment, including the marks on animals, seals and means of transport, correspond with the information provided in the official certificates, official attestations and other documents accompanying it"\textsuperscript{107}.

[Compare with the more succinct definition in article 2(18) of Regulation No. 882/2004-].

- 'physical check': "... a check on animals or goods and, as appropriate, checks on packaging, the means of transport, labelling and temperature, the sampling for analysis, testing or diagnosis and any other check necessary to verify compliance with the rules referred to in Article 1(2)"\textsuperscript{108}.

[It adjusts the definition included in article 2(19) of Regulation No. 882/2004 to the new scope of the proposed text].

- 'transhipment': "... the movement of goods subject to the official controls provided for in Article 45(1) which arrive by sea or by air transport from a third country from a vessel or aircraft and are transported under customs supervision to another vessel or aircraft in the same port or airport in preparation for onward travel"\textsuperscript{109}.

- 'transit': "... movement from one third country to another third country passing under customs supervision through one of the territories listed in Annex I or from one of the territories listed in Annex I to another territory listed in Annex I passing through the territory of a third country"\textsuperscript{110}.

- 'supervision by the customs authorities': "... action as defined in Article 4(13) of Regulation (EEC) No. 2913/92\textsuperscript{111}.

[A very different definition of the generic notion of 'surveillance' established in article 2(9) of Regulation No. 882/2004].

- 'control by the customs authorities': "... means customs controls as defined in Article 4(14) of [mentioned] Regulation (EEC) No. 2913/92\textsuperscript{112}.

- 'official detention': "... the procedure by which the competent authorities ensure that animals and goods subject to official controls are not moved or tampered with pending a decision on their destination; it includes storage by operators under the control of the competent authorities"\textsuperscript{113}.

\textsuperscript{106} Ibidem, article 2(46).
\textsuperscript{107} Ibidem, article 2(47).
\textsuperscript{108} Ibidem, article 2(48).
\textsuperscript{109} Ibidem, article 2(49).
\textsuperscript{110} Ibidem, article 2(50).
\textsuperscript{112} Article 2(51) of the text proposed by the Commission.
\textsuperscript{113} Ibidem, article 2(52).
\textsuperscript{114} Ibidem, article 2(53).
In this case the definition included in article 2(13) of Regulation No. 882/2004 has also been adapted to the new scope of the proposed text.

- 'additional official controls': «... those controls which were not originally planned and which were decided on the basis of the findings of previous official controls, or other official activities »115.

- 'official certification': «... the procedure by which assurance concerning compliance with one or more requirements laid down in the rules referred to in Article 1(2) is provided by the competent authorities»116.

[Another adaptation of the definition in article 2(12) of Regulation No. 882/2004]

- 'control plan': «... a description established by the competent authorities containing information on the structure and organisation of the official control system, and of its operation and the detailed planning of official controls to be performed in each of the areas referred to in Article 1(2) over a period of time»117.

[Compare with the more concise definition of 'control plan' established in article 2(20) of Regulation No. 882/2004].


IV. Conclusions

Although, at first sight it would seem that the proposed Regulation is as complex as it is far-reaching, it must be remembered that such complexity is relative if compared with the labyrinth of Community regulations that it replaces, repeals, modifies or complements.

With regard to the question asked in the title, it is irrelevant if the future Regulation will be integrated in Food law or Agri-food law, etc. What is indeed relevant (and very important!) is that the new regulations refer to the food supply chain as a whole... in order to rectify, in a certain sense, the approach of the Regulation No. 178/2002120 which, despite being based on the supposedly comprehensive slogan121 “from Farm to Fork” 122, establishes an unusual and problematic asymmetric definition of “food law” since it only intends «... to take a sufficiently123 comprehensive and integrated approach to food safety …»124.

115 Ibidem, article 2(54).
116 Ibidem, article 2(55).
117 Ibidem, article 2(56).
118 See footnote 82.
119 Article 2(57) of the text proposed by the Commission.
120 See footnote 19.
121 Pure political propaganda to calm public opinion after the "mad cow" crisis, according to VIDRERAS PEREZ, C. (see her article mentioned in footnote 21 on p. 27).
122 See footnote 19.
123 Emphasis added by the author.
124 See recital No. 11 of Regulation No. 178/2002: «In order to take a sufficiently comprehensive and integrated approach to food safety, there should be a broad definition of food law covering a wide range of provisions with a direct or indirect effect
Indeed, the above mentioned definition («“food law” means the laws, regulations and administrative provisions governing food in general, and food safety in particular, whether at Community or national level; it covers any stage of production, processing and distribution of food, and also of feed produced for, or fed to, food-producing animals.»125) is incomplete since it only refers to food and feed, contradicting what is stated in the ambiguous and imprecise recital No. 12 of Regulation No. 178/2002:

« In order to ensure the safety of food, it is necessary to consider all aspects of the food production chain as a continuum from and including primary production and the production of animal feed up to and including sale or supply of food to the consumer because each element may have a potential impact on food safety ».

Although the proposed text confirms the same definition of ‘food law’126 (with a certain overlapping with legislation on feed), there is no doubt that the future Regulation would be founded on a really wide-ranging and inclusive notion of this notion.

If we began with a question, we will end with another: Is it necessary now to review the Regulation No. 178/2002 taking into account the new concept of ‘food law’, and do it with a really all-embracing approach?

Suggested Citation

This Provisional PDF corresponds to the article as it appeared upon acceptance. Fully formatted PDF and full text (HTML) versions will be made available soon.

125 See article 3(1) of Regulation No. 178/2002.
126 See article 2(3) of the text proposed by the Commission.